

105TH CONGRESS  
2D SESSION

# H. R. 10

## AN ACT

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

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To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**  
2 **TENTS.**

3 (a) SHORT TITLE.—This Act may be cited as the  
4 “Financial Services Act of 1998”.

5 (b) PURPOSES.—The purposes of this Act are as fol-  
6 lows:

7 (1) To enhance competition in the financial  
8 services industry, in order to foster innovation and  
9 efficiency.

10 (2) To ensure the continued safety and sound-  
11 ness of depository institutions.

12 (3) To provide necessary and appropriate pro-  
13 tections for investors and ensure fair and honest  
14 markets in the delivery of financial services.

15 (4) To provide for appropriate functional regu-  
16 lation of insurance activities.

17 (5) To reduce and, to the maximum extent  
18 practicable, to eliminate the legal barriers preventing  
19 affiliation among depository institutions, securities  
20 firms, insurance companies, and other financial serv-  
21 ice providers and to provide a prudential framework  
22 for achieving that result.

23 (6) To enhance the availability of financial serv-  
24 ices to citizens of all economic circumstances and in  
25 all geographic areas.

1           (7) To enhance the competitiveness of United  
2       States financial service providers internationally.

3           (8) To ensure compliance by depository institu-  
4       tions with the provisions of the Community Rein-  
5       vestment Act of 1977 and enhance the ability of de-  
6       pository institutions to meet the capital and credit  
7       needs of all citizens and communities, including un-  
8       derserved communities and populations.

9       (c) TABLE OF CONTENTS.—The table of contents for  
10 this Act is as follows:

Sec. 1. Short title; purposes; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS,  
INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

- Sec. 101. Glass-Steagall Act reformed.
- Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.
- Sec. 103. Financial holding companies.
- Sec. 104. Certain State laws preempted.
- Sec. 105. Mutual bank holding companies authorized.
- Sec. 106. Prohibition on deposit production offices.
- Sec. 107. Clarification of branch closure requirements.
- Sec. 108. Amendments relating to limited purpose banks.
- Sec. 109. Responsiveness to community needs for financial services.
- Sec. 110. Reports on ongoing FTC study of consumer privacy issues.
- Sec. 110A. GAO study of economic impact on community banks and other small financial institutions.

Subtitle B—Streamlining Supervision of Financial Holding Companies

- Sec. 111. Streamlining financial holding company supervision.
- Sec. 112. Elimination of application requirement for financial holding companies.
- Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
- Sec. 114. Prudential safeguards.
- Sec. 115. Examination of investment companies.
- Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
- Sec. 117. Interagency consultation.

Subtitle C—Subsidiaries of National Banks

- Sec. 121. Permissible activities for subsidiaries of national banks.
- Sec. 122. Misrepresentations regarding depository institution liability for obligations of affiliates.
- Sec. 123. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

- Sec. 131. Wholesale financial holding companies established.
- Sec. 132. Authorization to release reports.
- Sec. 133. Conforming amendments.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

- Sec. 141. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.
- Sec. 142. Interagency data sharing.
- Sec. 143. Clarification of status of subsidiaries and affiliates.
- Sec. 144. Annual GAO report.

Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

- Sec. 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial holding companies.
- Sec. 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.

Subtitle G—Federal Home Loan Bank System

- Sec. 161. Federal home loan banks
- Sec. 162. Membership and collateral.
- Sec. 163. The Office of Finance.
- Sec. 164. Management of banks.
- Sec. 165. Advances to nonmember borrowers.
- Sec. 166. Powers and duties of banks.
- Sec. 167. Mergers and consolidations of Federal home loan banks.
- Sec. 168. Technical amendments.
- Sec. 169. Definitions.
- Sec. 170. Resolution funding corporation
- Sec. 171. Capital structure of the Federal home loan banks.
- Sec. 172. Investments.
- Sec. 173. Federal Housing Finance Board.

Subtitle H—Direct Activities of Banks

- Sec. 181. Authority of national banks to underwrite certain municipal bonds

Subtitle I—Deposit Insurance Funds

Sec. 186. Study of safety and soundness of funds.

Subtitle J—Effective Date of Title

Sec. 191. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

- Sec. 201. Definition of broker.
- Sec. 202. Definition of dealer.
- Sec. 203. Registration for sales of private securities offerings.
- Sec. 204. Sales practices and complaint procedures.
- Sec. 205. Information sharing.
- Sec. 206. Definition and treatment of banking products.
- Sec. 207. Derivative instrument and qualified investor defined.
- Sec. 208. Government securities defined.
- Sec. 209. Effective date.
- Sec. 210. Rule of construction.

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.
- Sec. 212. Lending to an affiliated investment company.
- Sec. 213. Independent directors.
- Sec. 214. Additional SEC disclosure authority.
- Sec. 215. Definition of broker under the Investment Company Act of 1940.
- Sec. 216. Definition of dealer under the Investment Company Act of 1940.
- Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
- Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
- Sec. 220. Interagency consultation.
- Sec. 221. Treatment of bank common trust funds.
- Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 223. Conforming change in definition.
- Sec. 224. Conforming amendment.
- Sec. 225. Effective date.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

- Sec. 231. Supervision of investment bank holding companies by the Securities and Exchange Commission.

Subtitle D—Study

- Sec. 241. Study of methods to inform investors and consumers of uninsured products.
- Sec. 242. Study of limitation on fees associated with acquiring financial products.

Subtitle E—Disclosure of Customer Costs of Acquiring Financial Products

- Sec. 251. Improved and consistent disclosure.

## TITLE III—INSURANCE

## Subtitle A—State Regulation of Insurance

- Sec. 301. State regulation of the business of insurance.
- Sec. 302. Mandatory insurance licensing requirements.
- Sec. 303. Functional regulation of insurance.
- Sec. 304. Insurance underwriting in national banks.
- Sec. 305. New bank agency activities only through acquisition of existing licensed agents.
- Sec. 306. Title insurance activities of national banks and their affiliates.
- Sec. 307. Expedited and equalized dispute resolution for financial regulators.
- Sec. 308. Consumer protection regulations.
- Sec. 309. Certain State affiliation laws preempted for insurance companies and affiliates.

## Subtitle B—Redomestication of Mutual Insurers

- Sec. 311. General application.
- Sec. 312. Redomestication of mutual insurers.
- Sec. 313. Effect on State laws restricting redomestication.
- Sec. 314. Other provisions.
- Sec. 315. Definitions.
- Sec. 316. Effective date.

## Subtitle C—National Association of Registered Agents and Brokers

- Sec. 321. State flexibility in multistate licensing reforms.
- Sec. 322. National Association of Registered Agents and Brokers.
- Sec. 323. Purpose.
- Sec. 324. Relationship to the Federal Government.
- Sec. 325. Membership.
- Sec. 326. Board of directors.
- Sec. 327. Officers.
- Sec. 328. Bylaws, rules, and disciplinary action.
- Sec. 329. Assessments.
- Sec. 330. Functions of the NAIC.
- Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
- Sec. 332. Elimination of NAIC oversight.
- Sec. 333. Relationship to State law.
- Sec. 334. Coordination with other regulators.
- Sec. 335. Judicial review.
- Sec. 336. Definitions.

## TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Termination of expanded powers for new unitary S&L holding companies.
- Sec. 402. Retention of “Federal” in name of converted Federal savings association.

1 **TITLE I—FACILITATING AFFILI-**  
2 **ATION AMONG SECURITIES**  
3 **FIRMS, INSURANCE COMPA-**  
4 **NIES, AND DEPOSITORY IN-**  
5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

8 (a) SECTION 20 REPEALED.—Section 20 (12 U.S.C.  
9 377) of the Banking Act of 1933 (commonly referred to  
10 as the “Glass-Steagall Act”) is repealed.

11 (b) SECTION 32 REPEALED.—Section 32 (12 U.S.C.  
12 78) of the Banking Act of 1933 is repealed.

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**  
14 **HOLDING COMPANIES WHICH ARE NOT FI-**  
15 **NANCIAL HOLDING COMPANIES.**

16 (a) IN GENERAL.—Section 4(c)(8) of the Bank Hold-  
17 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is  
18 amended to read as follows:

19 “(8) shares of any company the activities of  
20 which had been determined by the Board by regula-  
21 tion under this paragraph as of the day before the  
22 date of the enactment of the Financial Services Act  
23 of 1998, to be so closely related to banking as to be  
24 a proper incident thereto (subject to such terms and



1 conditions contained in such regulation, unless modi-  
 2 fied by the Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

4 (1) AMENDMENT TO THE BANK HOLDING COM-  
 5 PANY ACT AMENDMENTS OF 1970.—Section 105 of  
 6 the Bank Holding Company Act Amendments of  
 7 1970 (12 U.S.C. 1850) is amended by striking “, to  
 8 engage directly or indirectly in a nonbanking activity  
 9 pursuant to section 4 of such Act,”.

10 (2) AMENDMENT TO THE BANK SERVICE COM-  
 11 PANY ACT.—Section 4(f) of the Bank Service Com-  
 12 pany Act (12 U.S.C. 1864(f)) is amended by strik-  
 13 ing the period and adding at the end the following:  
 14 “as of the day before the date of enactment of the  
 15 Financial Services Act of 1998.”.

16 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

17 (a) IN GENERAL.—The Bank Holding Company Act  
 18 of 1956 is amended by inserting after section 5 (12 U.S.C.  
 19 1844) the following new section:

20 **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

21 **“(a) FINANCIAL HOLDING COMPANY DEFINED.—**  
 22 For purposes of this section, the term ‘financial holding  
 23 company’ means a bank holding company which meets the  
 24 requirements of subsection (b).  
**”**

1       “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL  
2 HOLDING COMPANIES.—

3               “(1) IN GENERAL.—No bank holding company  
4       may engage in any activity or directly or indirectly  
5       acquire or retain shares of any company under this  
6       section unless the bank holding company meets the  
7       following requirements:

8               “(A) All of the subsidiary depository insti-  
9       tutions of the bank holding company are well  
10       capitalized.

11              “(B) All of the subsidiary depository insti-  
12       tutions of the bank holding company are well  
13       managed.

14              “(C) All of the subsidiary depository insti-  
15       tutions of the bank holding company have  
16       achieved a rating of ‘satisfactory record of  
17       meeting community credit needs’, or better, at  
18       the most recent examination of each such insti-  
19       tution under the Community Reinvestment Act  
20       of 1977.

21              “(D) All of the subsidiary insured deposi-  
22       tory institutions of the bank holding company  
23       (other than any such depository institution  
24       which does not, in the ordinary course of the  
25       business of the depository institution, offer con-

1           sumer transaction accounts to the general pub-  
2           lic) offer and maintain low-cost basic banking  
3           accounts.

4           “(E) The company has filed with the  
5           Board a declaration that the company elects to  
6           be a financial holding company and certifying  
7           that the company meets the requirements of  
8           subparagraphs (A) through (D).

9           “(2) FOREIGN BANKS AND COMPANIES.—For  
10          purposes of paragraph (1), the Board shall establish  
11          and apply comparable capital standards to a foreign  
12          bank that operates a branch or agency or owns or  
13          controls a bank or commercial lending company in  
14          the United States, and any company that owns or  
15          controls such foreign bank, giving due regard to the  
16          principle of national treatment and equality of com-  
17          petitive opportunity.

18          “(3) LIMITED EXCLUSIONS FROM COMMUNITY  
19          NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-  
20          POSITORY INSTITUTIONS.—

21          “(A) IN GENERAL.—If the requirements of  
22          subparagraph (B) are met, any depository insti-  
23          tution acquired by a bank holding company  
24          during the 24-month period preceding the sub-  
25          mission of a declaration under paragraph

1 (1)(E) and any depository institution acquired  
2 after the submission of such declaration may be  
3 excluded for purposes of paragraph (1)(C) until  
4 the later of—

5 “(i) the end of the 24-month period  
6 beginning on the date the acquisition of  
7 the depository institution by such company  
8 is consummated; or

9 “(ii) the date of completion of the  
10 first examination of such depository insti-  
11 tution under the Community Reinvestment  
12 Act of 1977 which is conducted after the  
13 date of the acquisition of the depository in-  
14 stitution.

15 “(B) REQUIREMENTS.—The requirements  
16 of this subparagraph are met with respect to  
17 any bank holding company referred to in sub-  
18 paragraph (A) if—

19 “(i) the bank holding company has  
20 submitted an affirmative plan to the ap-  
21 propriate Federal banking agency to take  
22 such action as may be necessary in order  
23 for such institution to achieve a rating of  
24 ‘satisfactory record of meeting community  
25 credit needs’, or better, at the next exam-

1 ination of the institution under the Com-  
2 munity Reinvestment Act of 1977; and

3 “(ii) the plan has been approved by  
4 such agency.

5 “(c) ENGAGING IN ACTIVITIES FINANCIAL IN NA-  
6 TURE.—

7 “(1) IN GENERAL.—Notwithstanding section  
8 4(a), a financial holding company and a wholesale fi-  
9 nancial holding company may engage in any activity,  
10 and acquire and retain the shares of any company  
11 engaged in any activity, which the Board has deter-  
12 mined (by regulation or order) to be financial in na-  
13 ture or incidental to such financial activities.

14 “(2) FACTORS TO BE CONSIDERED.—In deter-  
15 mining whether an activity is financial in nature or  
16 incidental to financial activities, the Board shall take  
17 into account—

18 “(A) the purposes of this Act and the Fi-  
19 nancial Services Act of 1998;

20 “(B) changes or reasonably expected  
21 changes in the marketplace in which bank hold-  
22 ing companies compete;

23 “(C) changes or reasonably expected  
24 changes in the technology for delivering finan-  
25 cial services; and

1 “(D) whether such activity is necessary or  
2 appropriate to allow a bank holding company  
3 and the affiliates of a bank holding company  
4 to—

5 “(i) compete effectively with any com-  
6 pany seeking to provide financial services  
7 in the United States;

8 “(ii) use any available or emerging  
9 technological means, including any applica-  
10 tion necessary to protect the security or ef-  
11 ficacy of systems for the transmission of  
12 data or financial transactions, in providing  
13 financial services; and

14 “(iii) offer customers any available or  
15 emerging technological means for using fi-  
16 nancial services.

17 “(3) ACTIVITIES THAT ARE FINANCIAL IN NA-  
18 TURE.—The following activities shall be considered  
19 to be financial in nature:

20 “(A) Lending, exchanging, transferring, in-  
21 vesting for others, or safeguarding money or se-  
22 curities.

23 “(B) Insuring, guaranteeing, or indemnify-  
24 ing against loss, harm, damage, illness, disabil-  
25 ity, or death, or providing and issuing annu-

ities, and acting as principal, agent, or broker for purposes of the foregoing.

“(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

“(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

“(E) Underwriting, dealing in, or making a market in securities.

“(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1998, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

“(G) Engaging, in the United States, in any activity that—

“(i) a bank holding company may engage in outside the United States; and

1 “(ii) the Board has determined, under  
2 regulations issued pursuant to section  
3 4(c)(13) of this Act (as in effect on the  
4 day before the date of enactment of the Fi-  
5 nancial Services Act of 1998) to be usual  
6 in connection with the transaction of bank-  
7 ing or other financial operations abroad.

8 “(H) Directly or indirectly acquiring or  
9 controlling, whether as principal, on behalf of 1  
10 or more entities (including entities, other than  
11 a depository institution or subsidiary of a de-  
12 pository institution, that the bank holding com-  
13 pany controls) or otherwise, shares, assets, or  
14 ownership interests (including without limita-  
15 tion debt or equity securities, partnership inter-  
16 ests, trust certificates or other instruments rep-  
17 resenting ownership) of a company or other en-  
18 tity, whether or not constituting control of such  
19 company or entity, engaged in any activity not  
20 authorized pursuant to this section if—

21 “(i) the shares, assets, or ownership  
22 interests are not acquired or held by a de-  
23 pository institution or subsidiary of a de-  
24 pository institution;



1           “(ii) such shares, assets, or ownership  
2           interests are acquired and held by a securi-  
3           ties affiliate or an affiliate thereof as part  
4           of a bona fide underwriting or merchant  
5           banking activity, including investment ac-  
6           tivities engaged in for the purpose of ap-  
7           preciation and ultimate resale or disposi-  
8           tion of the investment;

9           “(iii) such shares, assets, or owner-  
10          ship interests, are held only for such a pe-  
11          riod of time as will permit the sale or dis-  
12          position thereof on a reasonable basis con-  
13          sistent with the nature of the activities de-  
14          scribed in clause (ii); and

15          “(iv) during the period such shares,  
16          assets, or ownership interests are held, the  
17          bank holding company does not actively  
18          participate in the day to day management  
19          or operation of such company or entity, ex-  
20          cept insofar as necessary to achieve the ob-  
21          jectives of clause (ii).

22          “(I) Directly or indirectly acquiring or con-  
23          trolling, whether as principal, on behalf of 1 or  
24          more entities (including entities, other than a  
25          depository institution or subsidiary of a deposi-

1 tory institution, that the bank holding company  
2 controls) or otherwise, shares, assets, or owner-  
3 ship interests (including without limitation debt  
4 or equity securities, partnership interests, trust  
5 certificates or other instruments representing  
6 ownership) of a company or other entity, wheth-  
7 er or not constituting control of such company  
8 or entity, engaged in any activity not authorized  
9 pursuant to this section if—

10 “(i) the shares, assets, or ownership  
11 interests are not acquired or held by a de-  
12 pository institution or a subsidiary of a de-  
13 pository institution;

14 “(ii) such shares, assets, or ownership  
15 interests are acquired and held by an in-  
16 surance company that is predominantly en-  
17 gaged in underwriting life, accident and  
18 health, or property and casualty insurance  
19 (other than credit-related insurance);

20 “(iii) such shares, assets, or owner-  
21 ship interests represent an investment  
22 made in the ordinary course of business of  
23 such insurance company in accordance  
24 with relevant State law governing such in-  
25 vestments; and

1                   “(iv) during the period such shares,  
2                   assets, or ownership interests are held, the  
3                   bank holding company does not directly or  
4                   indirectly participate in the day-to-day  
5                   management or operation of the company  
6                   or entity except insofar as necessary to  
7                   achieve the objectives of clauses (ii) and  
8                   (iii).

9                   “(4) ACTIONS REQUIRED.—The Board shall, by  
10                  regulation or order, define, consistent with the pur-  
11                  poses of this Act, the following activities as, and the  
12                  extent to which such activities are, financial in na-  
13                  ture or incidental to activities which are financial in  
14                  nature:

15                       “(A) Lending, exchanging, transferring, in-  
16                       vesting for others, or safeguarding financial as-  
17                       sets other than money or securities.

18                       “(B) Providing any device or other instru-  
19                       mentality for transferring money or other finan-  
20                       cial assets;

21                       “(C) Arranging, effecting, or facilitating fi-  
22                       nancial transactions for the account of third  
23                       parties.

24                   “(5) POST CONSUMMATION NOTIFICATION.—

1           “(A) IN GENERAL.—A financial holding  
2           company and a wholesale financial holding com-  
3           pany that acquires any company, or commences  
4           any activity, pursuant to this subsection shall  
5           provide written notice to the Board describing  
6           the activity commenced or conducted by the  
7           company acquired no later than 30 calendar  
8           days after commencing the activity or con-  
9           summing the acquisition.

10           “(B) APPROVAL NOT REQUIRED FOR CER-  
11           TAIN FINANCIAL ACTIVITIES.—Except as pro-  
12           vided in section 4(j) with regard to the acquisi-  
13           tion of a savings association, a financial holding  
14           company and a wholesale financial holding com-  
15           pany may commence any activity, or acquire  
16           any company, pursuant to paragraph (3) or any  
17           regulation prescribed or order issued under  
18           paragraph (4), without prior approval of the  
19           Board.

20           “(d) PROVISIONS APPLICABLE TO FINANCIAL HOLD-  
21           ING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

22           “(1) IN GENERAL.—If the Board finds that a  
23           financial holding company is not in compliance with  
24           the requirements of subparagraph (A), (B), (C), or

1 (D) of subsection (b)(1), the Board shall give notice  
2 of such finding to the company.

3 “(2) AGREEMENT TO CORRECT CONDITIONS RE-  
4 QUIRED.—Within 45 days of receipt by a financial  
5 holding company of a notice given under paragraph  
6 (1) (or such additional period as the Board may per-  
7 mit), the company shall execute an agreement ac-  
8 ceptable to the Board to comply with the require-  
9 ments applicable to a financial holding company.

10 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until  
11 the conditions described in a notice to a financial  
12 holding company under paragraph (1) are corrected,  
13 the Board may impose such limitations on the con-  
14 duct or activities of the company or any affiliate of  
15 the company as the Board determines to be appro-  
16 priate under the circumstances.

17 “(4) FAILURE TO CORRECT.—If, after receiving  
18 a notice under paragraph (1), a financial holding  
19 company does not—

20 “(A) execute and implement an agreement  
21 in accordance with paragraph (2);

22 “(B) comply with any limitations imposed  
23 under paragraph (3);

24 “(C) in the case of a notice of failure to  
25 comply with subsection (b)(1)(A), restore each

1           depository institution subsidiary to well capital-  
2           ized status before the end of the 180-day period  
3           beginning on the date such notice is received by  
4           the company (or such other period permitted by  
5           the Board); or

6           “(D) in the case of a notice of failure to  
7           comply with subparagraph (B), (C), or (D) of  
8           subsection (b)(1), restore compliance with any  
9           such subparagraph by the date the next exam-  
10          ination of the depository institution subsidiary  
11          is completed or by the end of such other period  
12          as the Board determines to be appropriate,

13       the Board may require such company, under such  
14       terms and conditions as may be imposed by the  
15       Board and subject to such extension of time as may  
16       be granted in the Board’s discretion, to divest con-  
17       trol of any depository institution subsidiary or, at  
18       the election of the financial holding company, in-  
19       stead to cease to engage in any activity conducted by  
20       such company or its subsidiaries pursuant to this  
21       section.

22           “(5) CONSULTATION.—In taking any action  
23       under this subsection, the Board shall consult with  
24       all relevant Federal and State regulatory agencies.

1       “(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-  
2 nancial holding company shall assure that—

3               “(1) the procedures of the holding company for  
4 identifying and managing financial and operational  
5 risks within the company, and the subsidiaries of  
6 such company, adequately protect the subsidiaries of  
7 such company which are insured depository institu-  
8 tions from such risks;

9               “(2) the holding company has reasonable poli-  
10 cies and procedures to preserve the separate cor-  
11 porate identity and limited liability of such company  
12 and the subsidiaries of such company, for the pro-  
13 tection of the company’s subsidiary insured deposi-  
14 tory institutions; and

15               “(3) the holding company complies with this  
16 section.

17       “(f) AUTHORITY TO RETAIN LIMITED NON-  
18 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

19               “(1) IN GENERAL.—Notwithstanding section  
20 4(a), a company that is not a bank holding company  
21 or a foreign bank (as defined in section 1(b)(7) of  
22 the International Banking Act of 1978) and becomes  
23 a financial holding company after the date of the en-  
24 actment of the Financial Services Act of 1998 may  
25 continue to engage in any activity and retain direct

1 or indirect ownership or control of shares of a com-  
2 pany engaged in any activity if—

3 “(A) the holding company lawfully was en-  
4 gaged in the activity or held the shares of such  
5 company on September 30, 1997;

6 “(B) the holding company is predomi-  
7 nantly engaged in financial activities as defined  
8 in paragraph (2); and

9 “(C) the company engaged in such activity  
10 continues to engage only in the same activities  
11 that such company conducted on September 30,  
12 1997, and other activities permissible under  
13 this Act.

14 “(2) PREDOMINANTLY FINANCIAL.—For pur-  
15 poses of this subsection, a company is predominantly  
16 engaged in financial activities if the annual gross  
17 revenues derived by the holding company and all  
18 subsidiaries of the holding company (excluding reve-  
19 nues derived from subsidiary depository institu-  
20 tions), on a consolidated basis, from engaging in ac-  
21 tivities that are financial in nature or are incidental  
22 to activities that are financial in nature under sub-  
23 section (c) represent at least 85 percent of the con-  
24 solidated annual gross revenues of the company.



1           “(3) NO EXPANSION OF GRANDFATHERED COM-  
2           MERCIAL ACTIVITIES THROUGH MERGER OR CON-  
3           SOLIDATION.—A financial holding company that en-  
4           gages in activities or holds shares pursuant to this  
5           subsection, or a subsidiary of such financial holding  
6           company, may not acquire, in any merger, consolida-  
7           tion, or other type of business combination, assets of  
8           any other company which is engaged in any activity  
9           which the Board has not determined to be financial  
10          in nature or incidental to activities that are financial  
11          in nature under subsection (c).

12          “(4) CONTINUING REVENUE LIMITATION ON  
13          GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-  
14          withstanding any other provision of this subsection,  
15          a financial holding company may continue to engage  
16          in activities or hold shares in companies pursuant to  
17          this subsection only to the extent that the aggregate  
18          annual gross revenues derived from all such activi-  
19          ties and all such companies does not exceed 15 per-  
20          cent of the consolidated annual gross revenues of the  
21          financial holding company (excluding revenues de-  
22          rived from subsidiary depository institutions).

23          “(5) CROSS MARKETING RESTRICTIONS APPLI-  
24          CABLE TO COMMERCIAL ACTIVITIES.—A depository

1 institution controlled by a financial holding company  
2 shall not—

3 “(A) offer or market, directly or through  
4 any arrangement, any product or service of a  
5 company whose activities are conducted or  
6 whose shares are owned or controlled by the fi-  
7 nancial holding company pursuant to this sub-  
8 section or subparagraph (H) or (I) of sub-  
9 section (c)(3); or

10 “(B) permit any of its products or services  
11 to be offered or marketed, directly or through  
12 any arrangement, by or through any company  
13 described in subparagraph (A).

14 “(6) TRANSACTIONS WITH NONFINANCIAL AF-  
15 FILIATES.—An insured depository institution con-  
16 trolled by a financial holding company may not en-  
17 gage in a covered transaction (as defined by section  
18 23A(b)(7) of the Federal Reserve Act) with any af-  
19 filiate controlled by the company pursuant to this  
20 subsection or subparagraph (H) or (I) of subsection  
21 (c)(3).

22 “(7) SUNSET OF GRANDFATHER.—A financial  
23 holding company engaged in any activity, or retain-  
24 ing direct or indirect ownership or control of shares  
25 of a company, pursuant to this subsection, shall ter-

1       minate such activity and divest ownership or control  
2       of the shares of such company before the end of the  
3       10-year period beginning on the date of the enact-  
4       ment of the Financial Services Act of 1998. The  
5       Board may, upon application by a financial holding  
6       company, extend such 10-year period by not to ex-  
7       ceed an additional 5 years if such extension would  
8       not be detrimental to the public interest.

9       “(g) DEVELOPING ACTIVITIES.—A financial holding  
10      company and a wholesale financial holding company may  
11      engage directly or indirectly, or acquire shares of any com-  
12      pany engaged, in any activity that the Board has not de-  
13      termined to be financial in nature or incidental to financial  
14      activities under subsection (c) if—

15               “(1) the holding company reasonably concludes  
16              that the activity is financial in nature or incidental  
17              to financial activities;

18               “(2) the gross revenues from all activities con-  
19              ducted under this subsection represent less than 5  
20              percent of the consolidated gross revenues of the  
21              holding company;

22               “(3) the aggregate total assets of all companies  
23              the shares of which are held under this subsection  
24              do not exceed 5 percent of the holding company’s  
25              consolidated total assets;

1           “(4) the total capital invested in activities con-  
 2           ducted under this subsection represents less than 5  
 3           percent of the consolidated total capital of the hold-  
 4           ing company;

5           “(5) the Board has not determined that the ac-  
 6           tivity is not financial in nature or incidental to fi-  
 7           nancial activities under subsection (c); and

8           “(6) the holding company provides written noti-  
 9           fication to the Board describing the activity com-  
 10          menced or conducted by the company acquired no  
 11          later than 10 business days after commencing the  
 12          activity or consummating the acquisition.”.

13 **SEC. 104. CERTAIN STATE LAWS PREEMPTED.**

14          (a) AFFILIATIONS.—No State may by statute, regula-  
 15          tion, order, interpretation, or otherwise, prevent or signifi-  
 16          cantly interfere with the ability of an insured depository  
 17          institution or a wholesale financial institution to be affili-  
 18          ated with an entity (including an entity engaged in insur-  
 19          ance activities) as authorized by this Act or any other pro-  
 20          vision of Federal law.

21          (b) ACTIVITIES.—

22               (1) Except as provided in paragraphs (2), (3),  
 23               and (4), no State may by statute, regulation, order,  
 24               interpretation, or otherwise, prevent or significantly  
 25               interfere with the ability of an insured depository in-

stitution or a wholesale financial institution to engage, directly or indirectly or in conjunction with an affiliate, in any activity authorized under this Act or any other provision of Federal law.

(2) In accordance with the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A. v. Nelson*, 116 S.Ct. 1103 (1996), no State may, by statute, regulation, order, interpretation, or otherwise, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage, directly or indirectly, or in conjunction with an affiliate, in any insurance sales or solicitation activity, except that—

(A) State statutes and regulations governing insurance sales and solicitations which are no more restrictive than provisions in the Illinois “Act Authorizing and Regulating the Sale of Insurance by Financial Institutions, Public Act 90–41” (215 ILCS 5/1400–1416), as in effect on October 1, 1997, shall not be deemed to prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage, directly or indi-

1 rectly, or in conjunction with an affiliate, in any  
2 insurance sales or solicitation activity; and

3 (B) subparagraph (A) shall not create any  
4 inference regarding State statutes and regula-  
5 tions governing insurance sales and solicitations  
6 other than State statutes and regulations de-  
7 scribed in subparagraph (A).

8 (3) State statutes, regulations, orders, and in-  
9 terpretations or otherwise shall not be preempted  
10 under paragraph (1) if they—

11 (A) relate to, or are enacted or issued for  
12 the purpose of regulating, the business of insur-  
13 ance in accordance with the McCarran-Fer-  
14 guson Act;

15 (B) apply only to entities that are not in-  
16 sured depository institutions or wholesale finan-  
17 cial institutions but which are engaged in the  
18 business of insurance;

19 (C) do not relate to, and are not enacted  
20 or issued for the purpose of regulating—

21 (i) cross-marketing; or

22 (ii) activities, including cross-market-  
23 ing, which are subject to paragraph (2);

24 (D) are applicable to and are applied in  
25 the same manner with respect to an affiliate of

1 an insured depository institution or a wholesale  
2 financial institution as they are applicable to  
3 and are applied to those entities that are not  
4 affiliated with an insured depository institution  
5 or a wholesale financial institution; and

6 (E) do not prevent or significantly inter-  
7 fere with the ability of an insured depository in-  
8 stitution or wholesale financial institution to en-  
9 gage in activities authorized for such institution  
10 under this Act or any other provision of Federal  
11 law.

12 (4) Paragraphs (1) and (2) shall not be con-  
13 strued as affecting the jurisdiction of the securities  
14 commission (or any agency or office performing like  
15 functions) of any State, under the laws of such  
16 State, to investigate and bring enforcement actions,  
17 consistent with section 18(c) of the Securities Act of  
18 1933, with respect to fraud or deceit or unlawful  
19 conduct by any person, in connection with securities  
20 or securities transactions.

21 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
22 **IZED.**

23 (a) IN GENERAL.—Section 3(g)(2) of the Bank Hold-  
24 ing Company Act of 1956 (12 U.S.C. 1842(g)(2)) is  
25 amended to read as follows:

1           “(2) REGULATIONS.—A bank holding company  
 2           organized as a mutual holding company shall be reg-  
 3           ulated on terms, and shall be subject to limitations,  
 4           comparable to those applicable to any other bank  
 5           holding company.”.

6 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**  
 7 **FICES.**

8           (a) IN GENERAL.—Section 109(d) of the Riegle-Neal  
 9 Interstate Banking and Branching Efficiency Act of 1994  
 10 (12 U.S.C. 1835a(d)) is amended—

11           (1) by inserting “, the Financial Services Act of  
 12           1998,” after “pursuant to this title”; and

13           (2) by inserting “or such Act” after “made by  
 14           this title”.

15           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 16 Section 109(e)(4) of the Riegle-Neal Interstate Banking  
 17 and Branching Efficiency Act of 1994 (12 U.S.C.  
 18 1835a(e)(4)) is amended by inserting “and any branch of  
 19 a bank controlled by an out-of-State bank holding com-  
 20 pany (as defined in section 2(o)(7) of the Bank Holding  
 21 Company Act of 1956)” before the period.

22 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**  
 23 **MENTS.**

24           Section 42(d)(4)(A) of the Federal Deposit Insurance  
 25 Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting



1 “and any bank controlled by an out-of-State bank holding  
 2 company (as defined in section 2(o)(7) of the Bank Hold-  
 3 ing Company Act of 1956)” before the period.

4 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**  
 5 **BANKS.**

6 Section 4(f) of the Bank Holding Company Act of  
 7 1956 (12 U.S.C. 1843(f)) is amended—

8 (1) in paragraph (2)(A)(ii)—

9 (A) by striking “and” at the end of sub-  
 10 clause (IX);

11 (B) by inserting “and” after the semicolon  
 12 at the end of subclause (X); and

13 (C) by inserting after subclause (X) the  
 14 following new subclause:

15 “(XI) assets that are derived  
 16 from, or are incidental to, activities in  
 17 which institutions described in section  
 18 2(c)(2)(F) are permitted to engage,”;

19 (2) in paragraph (2), by striking subparagraph  
 20 (B) and inserting the following new subparagraphs:

21 “(B) any bank subsidiary of such company  
 22 engages in any activity in which the bank was  
 23 not lawfully engaged as of March 5, 1987, un-  
 24 less the bank is well managed and well capital-  
 25 ized;

1           “(C) any bank subsidiary of such company  
2           both—

3                   “(i) accepts demand deposits or de-  
4                   posits that the depositor may withdraw by  
5                   check or similar means for payment to  
6                   third parties; and

7                   “(ii) engages in the business of mak-  
8                   ing commercial loans (and, for purposes of  
9                   this clause, loans made in the ordinary  
10                  course of a credit card operation shall not  
11                  be treated as commercial loans); or

12                  “(D) after the date of the enactment of the  
13                  Competitive Equality Amendments of 1987, any  
14                  bank subsidiary of such company permits any  
15                  overdraft (including any intraday overdraft), or  
16                  incurs any such overdraft in such bank’s ac-  
17                  count at a Federal reserve bank, on behalf of  
18                  an affiliate, other than an overdraft described  
19                  in paragraph (3).”; and

20                  (3) by striking paragraphs (3) and (4) and in-  
21                  serting the following new paragraphs:

22                   “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—  
23                  For purposes of paragraph (2)(D), an overdraft is  
24                  described in this paragraph if—

1           “(A) such overdraft results from an inad-  
2           vertent computer or accounting error that is be-  
3           yond the control of both the bank and the affili-  
4           ate; or

5           “(B) such overdraft—

6                   “(i) is permitted or incurred on behalf  
7                   of an affiliate which is monitored by, re-  
8                   ports to, and is recognized as a primary  
9                   dealer by the Federal Reserve Bank of  
10                  New York; and

11                  “(ii) is fully secured, as required by  
12                  the Board, by bonds, notes, or other obli-  
13                  gations which are direct obligations of the  
14                  United States or on which the principal  
15                  and interest are fully guaranteed by the  
16                  United States or by securities and obliga-  
17                  tions eligible for settlement on the Federal  
18                  Reserve book entry system.

19           “(4) DIVESTITURE IN CASE OF LOSS OF EX-  
20           EMPTION.—If any company described in paragraph  
21           (1) fails to qualify for the exemption provided under  
22           such paragraph by operation of paragraph (2), such  
23           exemption shall cease to apply to such company and  
24           such company shall divest control of each bank it  
25           controls before the end of the 180-day period begin-

1       ning on the date that the company receives notice  
 2       from the Board that the company has failed to con-  
 3       tinue to qualify for such exemption, unless before  
 4       the end of such 180-day period, the company has—

5               “(A) corrected the condition or ceased the  
 6               activity that caused the company to fail to con-  
 7               tinue to qualify for the exemption; and

8               “(B) implemented procedures that are rea-  
 9               sonably adapted to avoid the reoccurrence of  
 10              such condition or activity.”.

11   **SEC. 109. RESPONSIVENESS TO COMMUNITY NEEDS FOR FI-**  
 12               **NANCIAL SERVICES.**

13       (a) STUDY.—The Secretary of the Treasury, in con-  
 14       sultation with the Federal banking agencies (as defined  
 15       in section 3(z) of the Federal Deposit Insurance Act) and  
 16       the Securities and Exchange Commission, shall conduct  
 17       a study of the extent to which adequate services are being  
 18       provided as intended by the Community Reinvestment Act  
 19       of 1977, including services in low- and moderate-income  
 20       neighborhoods and for persons of modest means, as a re-  
 21       sult of the enactment of this Act.

22       (b) REPORT.—Before the end of the 2-year period be-  
 23       ginning on the date of the enactment of this Act, the Sec-  
 24       retary of the Treasury, in consultation with the Federal  
 25       banking agencies and the Securities and Exchange Com-

1 mission, shall submit a report to the Congress on the  
2 study conducted pursuant to subsection (a) and shall in-  
3 clude such recommendations as the Secretary determines  
4 to be appropriate for administrative and legislative action  
5 with respect to institutions covered under the Community  
6 Reinvestment Act of 1977.

7 **SEC. 110. REPORTS ON ONGOING FTC STUDY OF CON-**  
8 **SUMER PRIVACY ISSUES.**

9 With respect to the ongoing multistage study being  
10 conducted by the Federal Trade Commission on consumer  
11 privacy issues, the Commission shall submit to the Con-  
12 gress an interim report on the findings and conclusions  
13 of the Commission, together with such recommendations  
14 for legislative and administrative action as the Commis-  
15 sion determines to be appropriate, at the conclusion of  
16 each stage of such study and a final report at the conclu-  
17 sion of the study.

18 **SEC. 110A. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**  
19 **NITY BANKS AND OTHER SMALL FINANCIAL**  
20 **INSTITUTIONS.**

21 (a) STUDY REQUIRED.—The Comptroller General of  
22 the United States shall conduct a study of the projected  
23 economic impact that the enactment of this Act will have  
24 on financial institutions which have total assets of  
25 \$100,000,000 or less.

1 (b) REPORT TO THE CONGRESS.—The Comptroller  
 2 General of the United States shall submit a report to the  
 3 Congress before the end of the 6-month period beginning  
 4 on the date of the date of the enactment of this Act con-  
 5 taining the findings and conclusions of the Comptroller  
 6 General with regard to the study required under sub-  
 7 section (a) and such recommendations for legislative or  
 8 administrative action as the Comptroller General may de-  
 9 termine to be appropriate.

10 **Subtitle B—Streamlining Super-**  
 11 **vision of Financial Holding**  
 12 **Companies**

13 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**  
 14 **SUPERVISION.**

15 Section 5(c) of the Bank Holding Company Act of  
 16 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

17 “(c) REPORTS AND EXAMINATIONS.—

18 “(1) REPORTS.—

19 “(A) IN GENERAL.—The Board from time  
 20 to time may require any bank holding company  
 21 and any subsidiary of such company to submit  
 22 reports under oath to keep the Board informed  
 23 as to—

24 “(i) its financial condition, systems  
 25 for monitoring and controlling financial

1 and operating risks, and transactions with  
2 depository institution subsidiaries of the  
3 holding company; and

4 “(ii) compliance by the company or  
5 subsidiary with applicable provisions of  
6 this Act.

7 “(B) USE OF EXISTING REPORTS.—

8 “(i) IN GENERAL.—The Board shall,  
9 to the fullest extent possible, accept re-  
10 ports in fulfillment of the Board’s report-  
11 ing requirements under this paragraph  
12 that a bank holding company or any sub-  
13 sidiary of such company has provided or  
14 been required to provide to other Federal  
15 and State supervisors or to appropriate  
16 self-regulatory organizations.

17 “(ii) AVAILABILITY.—A bank holding  
18 company or a subsidiary of such company  
19 shall provide to the Board, at the request  
20 of the Board, a report referred to in clause  
21 (i).

22 “(iii) REQUIRED USE OF PUBLICLY  
23 REPORTED INFORMATION.—The Board  
24 shall, to the fullest extent possible, accept  
25 in fulfillment of any reporting or record-

1 keeping requirements under this Act infor-  
2 mation that is otherwise required to be re-  
3 ported publicly and externally audited fi-  
4 nancial statements.

5 “(iv) REPORTS FILED WITH OTHER  
6 AGENCIES.—In the event the Board re-  
7 quires a report from a functionally regu-  
8 lated nondepository institution subsidiary  
9 of a bank holding company of a kind that  
10 is not required by another Federal or State  
11 regulator or appropriate self-regulatory or-  
12 ganization, the Board shall request that  
13 the appropriate regulator or self-regulatory  
14 organization obtain such report. If the re-  
15 port is not made available to the Board,  
16 and the report is necessary to assess a ma-  
17 terial risk to the bank holding company or  
18 its subsidiary depository institution or  
19 compliance with this Act, the Board may  
20 require such subsidiary to provide such a  
21 report to the Board.

22 “(C) DEFINITION.—For purposes of this  
23 subsection, the term ‘functionally regulated  
24 nondepository institution’ means—



1 “(i) a broker or dealer registered  
 2 under the Securities Exchange Act of  
 3 1934;

4 “(ii) an investment adviser registered  
 5 under the Investment Advisers Act of  
 6 1940, with respect to the investment advi-  
 7 sory activities of such investment adviser  
 8 and activities incidental to such investment  
 9 advisory activities;

10 “(iii) an insurance company subject to  
 11 supervision by a State insurance commis-  
 12 sion, agency, or similar authority; and

13 “(iv) an entity subject to regulation  
 14 by the Commodity Futures Trading Com-  
 15 mission, with respect to the commodities  
 16 activities of such entity and activities inci-  
 17 dental to such commodities activities.

18 “(2) EXAMINATIONS.—

19 “(A) EXAMINATION AUTHORITY.—

20 “(i) IN GENERAL.—The Board may  
 21 make examinations of each bank holding  
 22 company and each subsidiary of a bank  
 23 holding company.

24 “(ii) FUNCTIONALLY REGULATED  
 25 NONDEPOSITORY INSTITUTION SUBSIDI-

1           ARIES.—Notwithstanding clause (i), the  
2           Board may make examinations of a func-  
3           tionally regulated nondepository institution  
4           subsidiary of a bank holding company only  
5           if—

6                   “(I) the Board has reasonable  
7                   cause to believe that such subsidiary  
8                   is engaged in activities that pose a  
9                   material risk to an affiliated depository  
10                  institution, or

11                  “(II) based on reports and other  
12                  available information, the Board has  
13                  reasonable cause to believe that a sub-  
14                  sidiary is not in compliance with this  
15                  Act or with provisions relating to  
16                  transactions with an affiliated depository  
17                  institution and the Board cannot  
18                  make such determination through ex-  
19                  amination of the affiliated depository  
20                  institution or bank holding company.

21                  “(B) LIMITATIONS ON EXAMINATION AU-  
22                  THORITY FOR BANK HOLDING COMPANIES AND  
23                  SUBSIDIARIES.—Subject to subparagraph  
24                  (A)(ii), the Board may make examinations  
25                  under subparagraph (A)(i) of each bank holding

1 company and each subsidiary of such holding  
2 company in order to—

3 “(i) inform the Board of the nature of  
4 the operations and financial condition of  
5 the holding company and such subsidiaries;

6 “(ii) inform the Board of—

7 “(I) the financial and operational  
8 risks within the holding company sys-  
9 tem that may pose a threat to the  
10 safety and soundness of any subsidi-  
11 ary depository institution of such  
12 holding company; and

13 “(II) the systems for monitoring  
14 and controlling such risks; and

15 “(iii) monitor compliance with the  
16 provisions of this Act and those governing  
17 transactions and relationships between any  
18 subsidiary depository institution and its af-  
19 filiates.

20 “(C) RESTRICTED FOCUS OF EXAMINA-  
21 TIONS.—The Board shall, to the fullest extent  
22 possible, limit the focus and scope of any exam-  
23 ination of a bank holding company to—

24 “(i) the bank holding company; and

1                   “(ii) any subsidiary of the holding  
2                   company that, because of—

3                   “(I) the size, condition, or activi-  
4                   ties of the subsidiary;

5                   “(II) the nature or size of trans-  
6                   actions between such subsidiary and  
7                   any depository institution which is  
8                   also a subsidiary of such holding com-  
9                   pany; or

10                  “(III) the centralization of func-  
11                  tions within the holding company sys-  
12                  tem,

13                  could have a materially adverse effect on  
14                  the safety and soundness of any depository  
15                  institution affiliate of the holding company.

16                  “(D) DEFERENCE TO BANK EXAMINA-  
17                  TIONS.—The Board shall, to the fullest extent  
18                  possible, use, for the purposes of this para-  
19                  graph, the reports of examinations of depository  
20                  institutions made by the appropriate Federal  
21                  and State depository institution supervisory au-  
22                  thority.

23                  “(E) DEFERENCE TO OTHER EXAMINA-  
24                  TIONS.—The Board shall, to the fullest extent  
25                  possible, address the circumstances which might

1 otherwise permit or require an examination by  
2 the Board by forgoing an examination and in-  
3 stead reviewing the reports of examination  
4 made of—

5 “(i) any registered broker or dealer or  
6 registered investment adviser by or on be-  
7 half of the Securities and Exchange Com-  
8 mission;

9 “(ii) any licensed insurance company  
10 by or on behalf of any state regulatory au-  
11 thority responsible for the supervision of  
12 insurance companies; and

13 “(iii) any other subsidiary that the  
14 Board finds to be comprehensively super-  
15 vised by a Federal or State authority.

16 “(3) CAPITAL.—

17 “(A) IN GENERAL.—The Board shall not,  
18 by regulation, guideline, order or otherwise, pre-  
19 scribe or impose any capital or capital adequacy  
20 rules, guidelines, standards, or requirements on  
21 any subsidiary of a financial holding company  
22 that is not a depository institution and—

23 “(i) is in compliance with applicable  
24 capital requirements of another Federal  
25 regulatory authority (including the Securi-

1                   ties and Exchange Commission) or State  
2                   insurance authority; or

3                   “(ii) is registered as an investment  
4                   adviser under the Investment Advisers Act  
5                   of 1940.

6                   “(B) RULE OF CONSTRUCTION.—Subpara-  
7                   graph (A) shall not be construed as preventing  
8                   the Board from imposing capital or capital ade-  
9                   quacy rules, guidelines, standards, or require-  
10                  ments with respect to activities of a registered  
11                  investment adviser other than investment advi-  
12                  sory activities or activities incidental to invest-  
13                  ment advisory activities.

14                  “(4) TRANSFER OF BOARD AUTHORITY TO AP-  
15                  PROPRIATE FEDERAL BANKING AGENCY.—

16                  “(A) IN GENERAL.—In the case of any  
17                  bank holding company which is not significantly  
18                  engaged in nonbanking activities, the Board, in  
19                  consultation with the appropriate Federal bank-  
20                  ing agency, may designate the appropriate Fed-  
21                  eral banking agency of the lead insured deposi-  
22                  tory institution subsidiary of such holding com-  
23                  pany as the appropriate Federal banking agen-  
24                  cy for the bank holding company.

1           “(B)    AUTHORITY    TRANSFERRED.—An  
2           agency designated by the Board under subpara-  
3           graph (A) shall have the same authority as the  
4           Board under this Act to—

5                   “(i) examine and require reports from  
6                   the bank holding company and any affiliate  
7                   of such company (other than a depository  
8                   institution) under section 5;

9                   “(ii) approve or disapprove applica-  
10                  tions or transactions under section 3;

11                  “(iii) take actions and impose pen-  
12                  alties under subsections (e) and (f) of sec-  
13                  tion 5 and section 8; and

14                  “(iv) take actions regarding the hold-  
15                  ing company, any affiliate of the holding  
16                  company (other than a depository institu-  
17                  tion), or any institution-affiliated party of  
18                  such company or affiliate under the Fed-  
19                  eral Deposit Insurance Act and any other  
20                  statute which the Board may designate.

21           “(C) AGENCY ORDERS.—Section 9 (of this  
22           Act) and section 105 of the Bank Holding  
23           Company Act Amendments of 1970 shall apply  
24           to orders issued by an agency designated under

1           subparagraph (A) in the same manner such sec-  
 2           tions apply to orders issued by the Board.

3           “(5) FUNCTIONAL REGULATION OF SECURITIES  
 4           AND INSURANCE ACTIVITIES.—The Board shall defer  
 5           to—

6                   “(A) the Securities and Exchange Commis-  
 7                   sion with regard to all interpretations of, and  
 8                   the enforcement of, applicable Federal securi-  
 9                   ties laws relating to the activities, conduct, and  
 10                  operations of registered brokers, dealers, invest-  
 11                  ment advisers, and investment companies; and

12                   “(B) the relevant State insurance authori-  
 13                   ties with regard to all interpretations of, and  
 14                   the enforcement of, applicable State insurance  
 15                   laws relating to the activities, conduct, and op-  
 16                   erations of insurance companies and insurance  
 17                   agents.”.

18   **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**  
 19           **FOR FINANCIAL HOLDING COMPANIES.**

20           (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-  
 21           tion 5(a) of the Bank Holding Company Act of 1956 (12  
 22           U.S.C. 1844(a)) is amended by adding the following new  
 23           sentence at the end: “A declaration filed in accordance  
 24           with section 6(b)(1)(E) shall satisfy the requirements of  
 25           this subsection with regard to the registration of a bank



1 holding company but not any requirement to file an appli-  
2 cation to acquire a bank pursuant to section 3.”.

3 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of  
4 the Bank Holding Company Act of 1956 (12 U.S.C.  
5 1844(e)(1)) is amended—

6 (1) by striking “Financial Institutions Super-  
7 visory Act of 1966, order” and inserting “Financial  
8 Institutions Supervisory Act of 1966, at the election  
9 of the bank holding company—

10 “(A) order”; and

11 (2) by striking “shareholders of the bank hold-  
12 ing company. Such distribution” and inserting  
13 “shareholders of the bank holding company; or

14 “(B) order the bank holding company, after due  
15 notice and opportunity for hearing, and after con-  
16 sultation with the bank’s primary supervisor, which  
17 shall be the Comptroller of the Currency in the case  
18 of a national bank, and the Federal Deposit Insur-  
19 ance Corporation and the appropriate State super-  
20 visor in the case of an insured nonmember bank, to  
21 terminate (within 120 days or such longer period as  
22 the Board may direct) the ownership or control of  
23 any such bank by such company.

24 “The distribution referred to in subparagraph (A)”.

1 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**  
 2 **AND SECURITIES AND EXCHANGE COMMIS-**  
 3 **SION.**

4 Section 5 of the Bank Holding Company Act of 1956  
 5 (12 U.S.C. 1844) is amended by adding at the end the  
 6 following new subsection:

7 “(g) AUTHORITY OF STATE INSURANCE REGULATOR  
 8 AND THE SECURITIES AND EXCHANGE COMMISSION.—

9 “(1) IN GENERAL.—Notwithstanding any other  
 10 provision of law, any regulation, order, or other ac-  
 11 tion of the Board which requires a bank holding  
 12 company to provide funds or other assets to a sub-  
 13 sidiary insured depository institution shall not be ef-  
 14 fective nor enforceable if—

15 “(A) such funds or assets are to be pro-  
 16 vided by—

17 “(i) a bank holding company that is  
 18 an insurance company or is a broker or  
 19 dealer registered under the Securities Ex-  
 20 change Act of 1934; or

21 “(ii) an affiliate of the depository in-  
 22 stitution which is an insurance company or  
 23 a broker or dealer registered under such  
 24 Act; and

25 “(B) the State insurance authority for the  
 26 insurance company or the Securities and Ex-

1 change Commission for the registered broker or  
2 dealer, as the case may be, determines in writ-  
3 ing sent to the holding company and the Board  
4 that the holding company shall not provide such  
5 funds or assets because such action would have  
6 a material adverse effect on the financial condi-  
7 tion of the insurance company or the broker or  
8 dealer, as the case may be.

9 “(2) NOTICE TO STATE INSURANCE AUTHORITY  
10 OR SEC REQUIRED.—If the Board requires a bank  
11 holding company, or an affiliate of a bank holding  
12 company, which is an insurance company or a  
13 broker or dealer described in paragraph (1)(A) to  
14 provide funds or assets to an insured depository in-  
15 stitution subsidiary of the holding company pursuant  
16 to any regulation, order, or other action of the  
17 Board referred to in paragraph (1), the Board shall  
18 promptly notify the State insurance authority for the  
19 insurance company or the Securities and Exchange  
20 Commission, as the case may be, of such require-  
21 ment.

22 “(3) DIVESTITURE IN LIEU OF OTHER AC-  
23 TION.—If the Board receives a notice described in  
24 paragraph (1)(B) from a State insurance authority  
25 or the Securities and Exchange Commission with re-

1       gard to a bank holding company or affiliate referred  
 2       to in such paragraph, the Board may order the bank  
 3       holding company to divest the insured depository in-  
 4       stitution within 180 days of receiving notice or such  
 5       longer period as the Board determines consistent  
 6       with the safe and sound operation of the insured de-  
 7       pository institution.

8               “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-  
 9       ing the period beginning on the date an order to di-  
 10      vest is issued by the Board under paragraph (3) to  
 11      a bank holding company and ending on the date the  
 12      divestiture is completed, the Board may impose any  
 13      conditions or restrictions on the holding company’s  
 14      ownership or operation of the insured depository in-  
 15      stitution, including restricting or prohibiting trans-  
 16      actions between the insured depository institution  
 17      and any affiliate of the institution, as are appro-  
 18      priate under the circumstances.”.

19 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

20       Section 5 of the Bank Holding Company Act of 1956  
 21      (12 U.S.C. 1844) is amended by inserting after subsection  
 22      (g) (as added by section 113 of this subtitle) the following  
 23      new subsection:

24       “(h) PRUDENTIAL SAFEGUARDS.—

1           “(1) IN GENERAL.—The Board may, by regula-  
2           tion or order, impose restrictions or requirements on  
3           relationships or transactions between a depository  
4           institution subsidiary of a bank holding company  
5           and any affiliate of such depository institution (other  
6           than a subsidiary of such institution) which the  
7           Board finds is consistent with the public interest,  
8           the purposes of this Act, the Financial Services Act  
9           of 1998, the Federal Reserve Act, and other Federal  
10          law applicable to depository institution subsidiaries  
11          of bank holding companies and the standards in  
12          paragraph (2).

13          “(2) STANDARDS.—The Board may exercise au-  
14          thority under paragraph (1) if the Board finds that  
15          such action will have any of the following effects:

16               “(A) Avoid any significant risk to the safe-  
17               ty and soundness of depository institutions or  
18               any Federal deposit insurance fund.

19               “(B) Enhance the financial stability of  
20               bank holding companies.

21               “(C) Avoid conflicts of interest or other  
22               abuses.

23               “(D) Enhance the privacy of customers of  
24               depository institutions.

1           “(E) Promote the application of national  
 2           treatment and equality of competitive oppor-  
 3           tunity between nonbank affiliates owned or con-  
 4           trolled by domestic bank holding companies and  
 5           nonbank affiliates owned or controlled by for-  
 6           eign banks operating in the United States.

7           “(3) REVIEW.—The Board shall regularly—

8                   “(A) review all restrictions or requirements  
 9                   established pursuant to paragraph (1) to deter-  
 10                  mine whether there is a continuing need for any  
 11                  such restriction or requirement to carry out the  
 12                  purposes of the Act, including any purpose de-  
 13                  scribed in paragraph (2); and

14                   “(B) modify or eliminate any restriction or  
 15                  requirement the Board finds is no longer re-  
 16                  quired for such purposes.”.

17 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

18           (a) EXCLUSIVE COMMISSION AUTHORITY.—

19                   (1) IN GENERAL.—The Commission shall be the  
 20                  sole Federal agency with authority to inspect and ex-  
 21                  amine any registered investment company that is not  
 22                  a bank holding company.

23                   (2) PROHIBITION ON BANKING AGENCIES.—A  
 24                  Federal banking agency may not inspect or examine

1       any registered investment company that is not a  
2       bank holding company.

3       (b) EXAMINATION RESULTS AND OTHER INFORMA-  
4       TION.—The Commission shall provide to any Federal  
5       banking agency, upon request, the results of any examina-  
6       tion, reports, records, or other information with respect  
7       to any registered investment company to the extent nec-  
8       essary for the agency to carry out its statutory responsibil-  
9       ities.

10       (c) DEFINITIONS.—For purposes of this section, the  
11       following definitions shall apply:

12               (1) BANK HOLDING COMPANY.—The term  
13       “bank holding company” has the meaning given to  
14       such term in section 2 of the Bank Holding Com-  
15       pany Act of 1956.

16               (2) COMMISSION.—The term “Commission”  
17       means the Securities and Exchange Commission.

18               (3) FEDERAL BANKING AGENCY.—The term  
19       “Federal banking agency” has the meaning given to  
20       such term in section 3(z) of the Federal Deposit In-  
21       surance Act.

22               (4) REGISTERED INVESTMENT COMPANY.—The  
23       term “registered investment company” means an in-  
24       vestment company which is registered with the Com-  
25       mission under the Investment Company Act of 1940.

1 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
2 **PERVISORY, AND ENFORCEMENT AUTHORITY**  
3 **OF THE BOARD.**

4 The Bank Holding Company Act of 1956 (12 U.S.C.  
5 1841 et seq.) is amended by inserting after section 10 the  
6 following new section:

7 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
8 **PERVISORY, AND ENFORCEMENT AUTHORITY**  
9 **OF THE BOARD.**

10 “(a) LIMITATION ON DIRECT ACTION.—

11 “(1) IN GENERAL.—The Board may not pre-  
12 scribe regulations, issue or seek entry of orders, im-  
13 pose restraints, restrictions, guidelines, require-  
14 ments, safeguards, or standards, or otherwise take  
15 any action under or pursuant to any provision of  
16 this Act or section 8 of the Federal Deposit Insur-  
17 ance Act against or with respect to a regulated sub-  
18 sidiary of a bank holding company unless the action  
19 is necessary to prevent or redress an unsafe or un-  
20 sound practice or breach of fiduciary duty by such  
21 subsidiary that poses a material risk to—

22 “(A) the financial safety, soundness, or  
23 stability of an affiliated depository institution;  
24 or

25 “(B) the domestic or international pay-  
26 ment system.



1           “(2) CRITERIA FOR BOARD ACTION.—The  
2       Board shall not take action otherwise permitted  
3       under paragraph (1) unless the Board finds that it  
4       is not reasonably possible to effectively protect  
5       against the material risk at issue through action di-  
6       rected at or against the affiliated depository institu-  
7       tion or against depository institutions generally.

8       “(b) LIMITATION ON INDIRECT ACTION.—The Board  
9       may not prescribe regulations, issue or seek entry of or-  
10      ders, impose restraints, restrictions, guidelines, require-  
11      ments, safeguards, or standards, or otherwise take any ac-  
12      tion under or pursuant to any provision of this Act or sec-  
13      tion 8 of the Federal Deposit Insurance Act against or  
14      with respect to a financial holding company or a wholesale  
15      financial holding company where the purpose or effect of  
16      doing so would be to take action indirectly against or with  
17      respect to a regulated subsidiary that may not be taken  
18      directly against or with respect to such subsidiary in ac-  
19      cordance with subsection (a).

20      “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-  
21      withstanding subsection (a), the Board may take action  
22      under this Act or section 8 of the Federal Deposit Insur-  
23      ance Act to enforce compliance by a regulated subsidiary  
24      with Federal law that the Board has specific jurisdiction  
25      to enforce against such subsidiary.

1       “(d) REGULATED SUBSIDIARY DEFINED.—For pur-  
2 poses of this section, the term ‘regulated subsidiary’  
3 means any company that is not a bank holding company  
4 and is—

5               “(1) a broker or dealer registered under the Se-  
6 curities Exchange Act of 1934;

7               “(2) an investment adviser registered under the  
8 Investment Advisers Act of 1940, with respect to the  
9 investment advisory activities of such investment ad-  
10 viser and activities incidental to such investment ad-  
11 visory activities;

12              “(3) an investment company registered under  
13 the Investment Company Act of 1940;

14              “(4) an insurance company or an insurance  
15 agency subject to supervision by a State insurance  
16 commission, agency, or similar authority; or

17              “(5) an entity subject to regulation by the Com-  
18 modity Futures Trading Commission, with respect  
19 to the commodities activities of such entity and ac-  
20 tivities incidental to such commodities activities.”.

21 **SEC. 117. INTERAGENCY CONSULTATION.**

22       (a) PURPOSE.—It is the intention of Congress that  
23 the Board of Governors of the Federal Reserve System,  
24 as the umbrella supervisor for financial holding compa-  
25 nies, and the State insurance regulators, as the functional

1 regulators of companies engaged in insurance activities,  
2 coordinate efforts to supervise companies that control both  
3 a depository institution and a company engaged in insur-  
4 ance activities regulated under State law. In particular,  
5 Congress believes that the Board and the State insurance  
6 regulators should share, on a confidential basis, informa-  
7 tion relevant to the supervision of companies that control  
8 both a depository institution and a company engaged in  
9 insurance activities, including information regarding the  
10 financial health of the consolidated organization and infor-  
11 mation regarding transactions and relationships between  
12 insurance companies and affiliated depository institutions.  
13 The appropriate Federal banking agencies for depository  
14 institutions should also share, on a confidential basis, in-  
15 formation with the relevant State insurance regulators re-  
16 garding transactions and relationships between depository  
17 institutions and affiliated companies engaged in insurance  
18 activities. The purpose of this section is to encourage this  
19 coordination and confidential sharing of information, and  
20 to thereby improve both the efficiency and the quality of  
21 the supervision of financial holding companies and their  
22 affiliated depository institutions and companies engaged  
23 in insurance activities.

24 (b) EXAMINATION RESULTS AND OTHER INFORMA-  
25 TION.—

1           (1) INFORMATION OF THE BOARD.—Upon the  
2       request of the appropriate insurance regulator of  
3       any State, the Board may provide any information  
4       of the Board regarding the financial condition, risk  
5       management policies, and operations of any financial  
6       holding company that controls a company that is en-  
7       gaged in insurance activities and is regulated by  
8       such State insurance regulator, and regarding any  
9       transaction or relationship between such an insur-  
10      ance company and any affiliated depository institu-  
11      tion. The Board may provide any other information  
12      to the appropriate State insurance regulator that the  
13      Board believes is necessary or appropriate to permit  
14      the State insurance regulator to administer and en-  
15      force applicable State insurance laws.

16          (2) BANKING AGENCY INFORMATION.—Upon  
17      the request of the appropriate insurance regulator of  
18      any State, the appropriate Federal banking agency  
19      may provide any information of the agency regard-  
20      ing any transaction or relationship between a deposi-  
21      tory institution supervised by such Federal banking  
22      agency and any affiliated company that is engaged  
23      in insurance activities regulated by such State insur-  
24      ance regulator. The appropriate Federal banking  
25      agency may provide any other information to the ap-

1       appropriate State insurance regulator that the agency  
2       believes is necessary or appropriate to permit the  
3       State insurance regulator to administer and enforce  
4       applicable State insurance laws.

5               (3) STATE INSURANCE REGULATOR INFORMA-  
6       TION.—Upon the request of the Board or the appro-  
7       priate Federal banking agency, a State insurance  
8       regulator may provide any examination or other re-  
9       ports, records, or other information to which such  
10      insurance regulator may have access with respect to  
11      a company which—

12               (A) is engaged in insurance activities and  
13               regulated by such insurance regulator; and

14               (B) is an affiliate of an insured depository  
15               institution, wholesale financial institution, or fi-  
16               nancial holding company.

17      (c) CONSULTATION.—Before making any determina-  
18      tion relating to the initial affiliation of, or the continuing  
19      affiliation of, an insured depository institution, wholesale  
20      financial institution, or financial holding company with a  
21      company engaged in insurance activities, the appropriate  
22      Federal banking agency shall consult with the appropriate  
23      State insurance regulator of such company and take the  
24      views of such insurance regulator into account in making  
25      such determination.

1       (d) EFFECT ON OTHER AUTHORITY.—Nothing in this  
2 section shall limit in any respect the authority of the ap-  
3 propriate Federal banking agency with respect to an in-  
4 sured depository institution, wholesale financial institu-  
5 tion, or bank holding company or any affiliate thereof  
6 under any provision of law.

7       (e) CONFIDENTIALITY AND PRIVILEGE.—

8           (1) CONFIDENTIALITY.—The appropriate Fed-  
9 eral banking agency shall not provide any informa-  
10 tion or material that is entitled to confidential treat-  
11 ment under applicable Federal banking agency regu-  
12 lations, or other applicable law, to a State insurance  
13 regulator unless such regulator agrees to maintain  
14 the information or material in confidence and to  
15 take all reasonable steps to oppose any effort to se-  
16 cure disclosure of the information or material by the  
17 regulator. The appropriate Federal banking agency  
18 shall treat as confidential any information or mate-  
19 rial obtained from a State insurance regulator that  
20 is entitled to confidential treatment under applicable  
21 State regulations, or other applicable law, and take  
22 all reasonable steps to oppose any effort to secure  
23 disclosure of the information or material by the Fed-  
24 eral banking agency.

1           (2) PRIVILEGE.—The provision pursuant to this  
2       section of information or material by a Federal  
3       banking agency or State insurance regulator shall  
4       not constitute a waiver of, or otherwise affect, any  
5       privilege to which the information or material is oth-  
6       erwise subject.

7       (f) DEFINITIONS.—For purposes of this section, the  
8       following definitions shall apply:

9           (1) APPROPRIATE FEDERAL BANKING AGENCY;  
10       INSURED DEPOSITORY INSTITUTION.—The terms  
11       “appropriate Federal banking agency” and “insured  
12       depository institution” shall have the same meanings  
13       as in section 3 of the Federal Deposit Insurance  
14       Act.

15       (2) BOARD; FINANCIAL HOLDING COMPANY;  
16       AND WHOLESALE FINANCIAL INSTITUTION.—The  
17       terms “Board”, “financial holding company”, and  
18       “wholesale financial institution” shall have the same  
19       meanings as in section 2 of the Bank Holding Com-  
20       pany Act of 1956.

## **Subtitle C—Subsidiaries of National Banks**

### **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF NATIONAL BANKS.**

(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—Chapter one of title LXII of the Revised Statutes of United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

#### **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

“(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

“(A) is not permissible for a national bank to engage in directly; or

“(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,



1 unless a national bank is specifically authorized by  
2 the express terms of a Federal statute and not by  
3 implication or interpretation to acquire shares of or  
4 an interest in, or to control, such subsidiary, such as  
5 by paragraph (2) of this subsection and section 25A  
6 of the Federal Reserve Act.

7 “(2) SPECIFIC AUTHORIZATION TO CONDUCT  
8 AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NA-  
9 TURE.—A national bank may control a company  
10 that engages in agency activities that have been de-  
11 termined to be financial in nature or incidental to  
12 such financial activities pursuant to and in accord-  
13 ance with section 6(c) of the Bank Holding Com-  
14 pany Act of 1956 if—

15 “(A) the company engages in such activi-  
16 ties solely as agent and not directly or indirectly  
17 as principal;

18 “(B) the national bank is well capitalized  
19 and well managed, and has achieved a rating of  
20 satisfactory or better at the most recent exam-  
21 ination of the bank under the Community Rein-  
22 vestment Act of 1977;

23 “(C) all depository institution affiliates of  
24 the national bank are well capitalized and well  
25 managed, and have achieved a rating of satis-

1 factory or better at the most recent examina-  
2 tion of each such depository institution under  
3 the Community Reinvestment Act of 1977; and

4 “(D) the bank has received the approval of  
5 the Comptroller of the Currency.

6 “(3) DEFINITIONS.—

7 “(A) COMPANY; CONTROL; SUBSIDIARY.—  
8 The terms ‘company’, ‘control’, and ‘subsidiary’  
9 have the meanings given to such terms in sec-  
10 tion 2 of the Bank Holding Company Act of  
11 1956.

12 “(B) WELL CAPITALIZED.—The term ‘well  
13 capitalized’ has the same meaning as in section  
14 38 of the Federal Deposit Insurance Act and,  
15 for purposes of this section, the Comptroller  
16 shall have exclusive jurisdiction to determine  
17 whether a national bank is well capitalized.

18 “(C) WELL MANAGED.—The term ‘well  
19 managed’ means—

20 “(i) in the case of a bank that has  
21 been examined, unless otherwise deter-  
22 mined in writing by the Comptroller—

23 “(I) the achievement of a com-  
24 posite rating of 1 or 2 under the Uni-  
25 form Financial Institutions Rating

1                   System (or an equivalent rating under  
2                   an equivalent rating system) in con-  
3                   nection with the most recent examina-  
4                   tion or subsequent review of the bank;  
5                   and

6                   “(II) at least a rating of 2 for  
7                   management, if that rating is given;  
8                   or

9                   “(ii) in the case of any national bank  
10                  that has not been examined, the existence  
11                  and use of managerial resources that the  
12                  Comptroller determines are satisfactory.

13           “(b) LIMITED EXCLUSIONS FROM COMMUNITY  
14 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSI-  
15 TORY INSTITUTIONS.—Any depository institution which  
16 becomes affiliated with a national bank during the 24-  
17 month period preceding the submission of an application  
18 to acquire a subsidiary under subsection (a)(2), and any  
19 depository institution which becomes so affiliated after the  
20 approval of such application, may be excluded for purposes  
21 of subsection (a)(2)(B) during the 24-month period begin-  
22 ning on the date of such acquisition if—

23           “(1) the depository institution has submitted an  
24           affirmative plan to the appropriate Federal banking  
25           agency (as defined in section 3 of the Federal De-

1       posit Insurance Act) to take such action as may be  
 2       necessary in order for such institution to achieve a  
 3       ‘satisfactory record of meeting community credit  
 4       needs’, or better, at the next examination of the in-  
 5       stitution under the Community Reinvestment Act of  
 6       1977; and

7               “(2) the plan has been approved by the appro-  
 8       priate Federal banking agency.”.

9       (b) LIMITATION ON CERTAIN ACTIVITIES IN SUB-  
 10      SIDIARIES.—Section 21(a)(1) of the Banking Act of 1933  
 11      (12 U.S.C. 378(a)(1)) is amended—

12             (1) by inserting “, or to be a subsidiary of any  
 13       person, firm, corporation, association, business trust,  
 14       or similar organization engaged (unless such subsidi-  
 15       ary (A) was engaged in such securities activities as  
 16       of September 15, 1997, or (B) is a nondepository  
 17       subsidiary of a foreign bank and is not also a sub-  
 18       sidiary of a domestic depository institution),” after  
 19       “to engage at the same time”; and

20             (2) by inserting “or any subsidiary of such  
 21       bank, company, or institution” after “or private  
 22       bankers”.

23      (c) TECHNICAL AND CONFORMING AMENDMENTS.—

24             (1) ANTITYING.—Section 106(a) of the Bank  
 25       Holding Company Act Amendments of 1970 is

1       amended by adding at the end the following new  
 2       sentence: “For purposes of this section, a subsidiary  
 3       of a national bank which engages in activities as an  
 4       agent pursuant to section 5136A(a)(2) shall be  
 5       deemed to be a subsidiary of a bank holding com-  
 6       pany, and not a subsidiary of a bank.”.

7               (2) SECTION 23B.—Section 23B(a) of the Fed-  
 8       eral Reserve Act (12 U.S.C. 371c–1(a)) is amended  
 9       by adding at the end the following new paragraph:

10              “(4) SUBSIDIARY OF NATIONAL BANK.—For  
 11       purposes of this section, a subsidiary of a national  
 12       bank which engages in activities as an agent pursu-  
 13       ant to section 5136A(a)(2) shall be deemed to be an  
 14       affiliate of the national bank and not a subsidiary of  
 15       the bank.”.

16       (d) CLERICAL AMENDMENT.—The table of sections  
 17       for chapter one of title LXII of the Revised Statutes of  
 18       the United States is amended—

19              (1) by redesignating the item relating to section  
 20       5136A as section 5136C; and

21              (2) by inserting after the item relating to sec-  
 22       tion 5136 the following new item:

“5136A. Financial subsidiaries of national banks.”.

1 **SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY**  
2 **INSTITUTION LIABILITY FOR OBLIGATIONS**  
3 **OF AFFILIATES.**

4 (a) IN GENERAL.—Chapter 47 of title 18, United  
5 States Code, is amended by inserting after section 1007  
6 the following new section:

7 **“§ 1008. Misrepresentations regarding financial insti-**  
8 **tution liability for obligations of affiliates**

9 “(a) IN GENERAL.—No institution-affiliated party of  
10 an insured depository institution or institution-affiliated  
11 party of a subsidiary or affiliate of an insured depository  
12 institution shall fraudulently represent that the institution  
13 is or will be liable for any obligation of a subsidiary or  
14 other affiliate of the institution.

15 “(b) CRIMINAL PENALTY.—Whoever violates sub-  
16 section (a) shall be fined under this title, imprisoned for  
17 not more than 1 year, or both.

18 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—  
19 For purposes of this section, the term ‘institution-affili-  
20 ated party’ with respect to a subsidiary or affiliate has  
21 the same meaning as in section 3 except references to an  
22 insured depository institution shall be deemed to be ref-  
23 erences to a subsidiary or affiliate of an insured depository  
24 institution.

25 “(d) OTHER DEFINITIONS.—For purposes of this  
26 section, the terms ‘affiliate’, ‘insured depository institu-

tion’, and ‘subsidiary’ have same meanings as in section 3 of the Federal Deposit Insurance Act.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following new item:

“1008. Misrepresentations regarding financial institution liability for obligations of affiliates.”.

**SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.**

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking the paragraph designated as “(m)” and inserting “(m) [Repealed]”.

**Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions**

**CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES**

**SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.**

(a) DEFINITION AND SUPERVISION.—Section 10 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended to read as follows:

**“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

“(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

1           “(1) WHOLESALE FINANCIAL HOLDING COM-  
2           PANY DEFINED.—The term ‘wholesale financial  
3           holding company’ means any company that—

4                   “(A) is registered as a bank holding com-  
5           pany;

6                   “(B) is predominantly engaged in financial  
7           activities as defined in section 6(g)(2);

8                   “(C) controls 1 or more wholesale financial  
9           institutions;

10                  “(D) does not control—

11                          “(i) a bank other than a wholesale fi-  
12           nancial institution;

13                          “(ii) an insured bank other than an  
14           institution permitted under subparagraph  
15           (D), (F), or (G) of section 2(c)(2); or

16                          “(iii) a savings association; and

17                   “(E) is not a foreign bank (as defined in  
18           section 1(b)(7) of the International Banking  
19           Act of 1978).

20           “(2) SAVINGS ASSOCIATION TRANSITION PE-  
21           RIOD.—Notwithstanding paragraph (1)(C)(iii), the  
22           Board may permit a company that controls a sav-  
23           ings association and that otherwise meets the re-  
24           quirements of paragraph (1) to become supervised  
25           under paragraph (1), if the company divests control



1 of any such savings association within such period  
2 not to exceed 5 years after becoming supervised  
3 under paragraph (1) as permitted by the Board.

4 “(b) SUPERVISION BY THE BOARD.—

5 “(1) IN GENERAL.—The provisions of this sec-  
6 tion shall govern the reporting, examination, and  
7 capital requirements of wholesale financial holding  
8 companies.

9 “(2) REPORTS.—

10 “(A) IN GENERAL.—The Board from time  
11 to time may require any wholesale financial  
12 holding company and any subsidiary of such  
13 company to submit reports under oath to keep  
14 the Board informed as to—

15 “(i) the company’s or subsidiary’s ac-  
16 tivities, financial condition, policies, sys-  
17 tems for monitoring and controlling finan-  
18 cial and operational risks, and transactions  
19 with depository institution subsidiaries of  
20 the holding company; and

21 “(ii) the extent to which the company  
22 or subsidiary has complied with the provi-  
23 sions of this Act and regulations prescribed  
24 and orders issued under this Act.

25 “(B) USE OF EXISTING REPORTS.—

1           “(i) IN GENERAL.—The Board shall,  
2           to the fullest extent possible, accept re-  
3           ports in fulfillment of the Board’s report-  
4           ing requirements under this paragraph  
5           that the wholesale financial holding com-  
6           pany or any subsidiary of such company  
7           has provided or been required to provide to  
8           other Federal and State supervisors or to  
9           appropriate self-regulatory organizations.

10           “(ii) AVAILABILITY.—A wholesale fi-  
11           nancial holding company or a subsidiary of  
12           such company shall provide to the Board,  
13           at the request of the Board, a report re-  
14           ferred to in clause (i).

15           “(C) EXEMPTIONS FROM REPORTING RE-  
16           QUIREMENTS.—

17           “(i) IN GENERAL.—The Board may,  
18           by regulation or order, exempt any com-  
19           pany or class of companies, under such  
20           terms and conditions and for such periods  
21           as the Board shall provide in such regula-  
22           tion or order, from the provisions of this  
23           paragraph and any regulation prescribed  
24           under this paragraph.

1                   “(ii) CRITERIA FOR CONSIDER-  
2                   ATION.—In making any determination  
3                   under clause (i) with regard to any exemp-  
4                   tion under such clause, the Board shall  
5                   consider, among such other factors as the  
6                   Board may determine to be appropriate,  
7                   the following factors:

8                   “(I) Whether information of the  
9                   type required under this paragraph is  
10                  available from a supervisory agency  
11                  (as defined in section 1101(7) of the  
12                  Right to Financial Privacy Act of  
13                  1978) or a foreign regulatory author-  
14                  ity of a similar type.

15                  “(II) The primary business of the  
16                  company.

17                  “(III) The nature and extent of  
18                  the domestic and foreign regulation of  
19                  the activities of the company.

20                  “(3) EXAMINATIONS.—

21                  “(A) LIMITED USE OF EXAMINATION AU-  
22                  THORITY.—The Board may make examinations  
23                  of each wholesale financial holding company  
24                  and each subsidiary of such company in order  
25                  to—

1 “(i) inform the Board regarding the  
2 nature of the operations and financial con-  
3 dition of the wholesale financial holding  
4 company and its subsidiaries;

5 “(ii) inform the Board regarding—

6 “(I) the financial and operational  
7 risks within the wholesale financial  
8 holding company system that may af-  
9 fect any depository institution owned  
10 by such holding company; and

11 “(II) the systems of the holding  
12 company and its subsidiaries for mon-  
13 itoring and controlling those risks;  
14 and

15 “(iii) monitor compliance with the  
16 provisions of this Act and those governing  
17 transactions and relationships between any  
18 depository institution controlled by the  
19 wholesale financial holding company and  
20 any of the company’s other subsidiaries.

21 “(B) RESTRICTED FOCUS OF EXAMINA-  
22 TIONS.—The Board shall, to the fullest extent  
23 possible, limit the focus and scope of any exam-  
24 ination of a wholesale financial holding com-  
25 pany under this paragraph to—

1 “(i) the holding company; and

2 “(ii) any subsidiary (other than an in-  
3 sured depository institution subsidiary) of  
4 the holding company that, because of the  
5 size, condition, or activities of the subsidi-  
6 ary, the nature or size of transactions be-  
7 tween such subsidiary and any affiliated  
8 depository institution, or the centralization  
9 of functions within the holding company  
10 system, could have a materially adverse ef-  
11 fect on the safety and soundness of any de-  
12 pository institution affiliate of the holding  
13 company.

14 “(C) DEFERENCE TO BANK EXAMINA-  
15 TIONS.—The Board shall, to the fullest extent  
16 possible, use the reports of examination of de-  
17 pository institutions made by the Comptroller of  
18 the Currency, the Federal Deposit Insurance  
19 Corporation, the Director of the Office of Thrift  
20 Supervision or the appropriate State depository  
21 institution supervisory authority for the pur-  
22 poses of this section.

23 “(D) DEFERENCE TO OTHER EXAMINA-  
24 TIONS.—The Board shall, to the fullest extent  
25 possible, address the circumstances which might

1 otherwise permit or require an examination by  
2 the Board by forgoing an examination and by  
3 instead reviewing the reports of examination  
4 made of—

5 “(i) any registered broker or dealer or  
6 any registered investment adviser by or on  
7 behalf of the Commission; and

8 “(ii) any licensed insurance company  
9 by or on behalf of any State government  
10 insurance agency responsible for the super-  
11 vision of the insurance company.

12 “(E) CONFIDENTIALITY OF REPORTED IN-  
13 FORMATION.—

14 “(i) IN GENERAL.—Notwithstanding  
15 any other provision of law, the Board shall  
16 not be compelled to disclose any nonpublic  
17 information required to be reported under  
18 this paragraph, or any information sup-  
19 plied to the Board by any domestic or for-  
20 eign regulatory agency, that relates to the  
21 financial or operational condition of any  
22 wholesale financial holding company or any  
23 subsidiary of such company.

24 “(ii) COMPLIANCE WITH REQUESTS  
25 FOR INFORMATION.—No provision of this

1           subparagraph shall be construed as author-  
2           izing the Board to withhold information  
3           from the Congress, or preventing the  
4           Board from complying with a request for  
5           information from any other Federal de-  
6           partment or agency for purposes within the  
7           scope of such department's or agency's ju-  
8           risdiction, or from complying with any  
9           order of a court of competent jurisdiction  
10          in an action brought by the United States  
11          or the Board.

12           “(iii) COORDINATION WITH OTHER  
13          LAW.—For purposes of section 552 of title  
14          5, United States Code, this subparagraph  
15          shall be considered to be a statute de-  
16          scribed in subsection (b)(3)(B) of such sec-  
17          tion.

18           “(iv) DESIGNATION OF CONFIDENTIAL  
19          INFORMATION.—In prescribing regulations  
20          to carry out the requirements of this sub-  
21          section, the Board shall designate informa-  
22          tion described in or obtained pursuant to  
23          this paragraph as confidential information.

24           “(F) COSTS.—The cost of any examination  
25          conducted by the Board under this section may

1 be assessed against, and made payable by, the  
2 wholesale financial holding company.

3 “(4) CAPITAL ADEQUACY GUIDELINES.—

4 “(A) CAPITAL ADEQUACY PROVISIONS.—

5 Subject to the requirements of, and solely in ac-  
6 cordance with, the terms of this paragraph, the  
7 Board may adopt capital adequacy rules or  
8 guidelines for wholesale financial holding com-  
9 panies.

10 “(B) METHOD OF CALCULATION.—In de-  
11 veloping rules or guidelines under this para-  
12 graph, the following provisions shall apply:

13 “(i) FOCUS ON DOUBLE LEVERAGE.—

14 The Board shall focus on the use by whole-  
15 sale financial holding companies of debt  
16 and other liabilities to fund capital invest-  
17 ments in subsidiaries.

18 “(ii) NO UNWEIGHTED CAPITAL  
19 RATIO.—The Board shall not, by regula-  
20 tion, guideline, order, or otherwise, impose  
21 under this section a capital ratio that is  
22 not based on appropriate risk-weighting  
23 considerations.

24 “(iii) NO CAPITAL REQUIREMENT ON  
25 REGULATED ENTITIES.—The Board shall



1 not, by regulation, guideline, order or oth-  
2 erwise, prescribe or impose any capital or  
3 capital adequacy rules, standards, guide-  
4 lines, or requirements upon any subsidiary  
5 that—

6 “(I) is not a depository institu-  
7 tion; and

8 “(II) is in compliance with appli-  
9 cable capital requirements of another  
10 Federal regulatory authority (includ-  
11 ing the Securities and Exchange Com-  
12 mission) or State insurance authority.

13 “(iv) LIMITATION.—The Board shall  
14 not, by regulation, guideline, order or oth-  
15 erwise, prescribe or impose any capital or  
16 capital adequacy rules, standards, guide-  
17 lines, or requirements upon any subsidiary  
18 that is not a depository institution and  
19 that is registered as an investment adviser  
20 under the Investment Advisers Act of  
21 1940, except that this clause shall not be  
22 construed as preventing the Board from  
23 imposing capital or capital adequacy rules,  
24 guidelines, standards, or requirements with  
25 respect to activities of a registered invest-

1           ment adviser other than investment advi-  
2           sory activities or activities incidental to in-  
3           vestment advisory activities.

4           “(v)   APPROPRIATE   EXCLUSIONS.—

5           The Board shall take full account of—

6                   “(I)   the   capital   requirements  
7                   made applicable to any subsidiary that  
8                   is not a depository institution by an-  
9                   other Federal regulatory authority or  
10                  State insurance authority; and

11                  “(II) industry norms for capital-  
12                  ization of a company’s unregulated  
13                  subsidiaries and activities.

14           “(vi) INTERNAL RISK MANAGEMENT  
15           MODELS.—The Board may incorporate in-  
16           ternal risk management models of whole-  
17           sale financial holding companies into its  
18           capital adequacy guidelines or rules and  
19           may take account of the extent to which  
20           resources of a subsidiary depository insti-  
21           tution may be used to service the debt or  
22           other liabilities of the wholesale financial  
23           holding company.

24           “(c) NONFINANCIAL ACTIVITIES AND INVEST-

25   MENTS.—

1 “(1) GRANDFATHERED ACTIVITIES.—

2 “(A) IN GENERAL.—Notwithstanding sec-  
3 tion 4(a), a company that becomes a wholesale  
4 financial holding company may continue to en-  
5 gage, directly or indirectly, in any activity and  
6 may retain ownership and control of shares of  
7 a company engaged in any activity if—

8 “(i) on the date of the enactment of  
9 the Financial Services Act of 1998, such  
10 wholesale financial holding company was  
11 lawfully engaged in that nonfinancial activ-  
12 ity, held the shares of such company, or  
13 had entered into a contract to acquire  
14 shares of any company engaged in such ac-  
15 tivity; and

16 “(ii) the company engaged in such ac-  
17 tivity continues to engage only in the same  
18 activities that such company conducted on  
19 the date of the enactment of the Financial  
20 Services Act of 1998, and other activities  
21 permissible under this Act.

22 “(B) NO EXPANSION OF GRANDFATHERED  
23 COMMERCIAL ACTIVITIES THROUGH MERGER OR  
24 CONSOLIDATION.—A wholesale financial holding  
25 company that engages in activities or holds

1 shares pursuant to this paragraph, or a subsidi-  
2 ary of such wholesale financial holding com-  
3 pany, may not acquire, in any merger, consoli-  
4 dation, or other type of business combination,  
5 assets of any other company which is engaged  
6 in any activity which the Board has not deter-  
7 mined to be financial in nature or incidental to  
8 activities that are financial in nature under sec-  
9 tion 6(c).

10 “(C) LIMITATION TO SINGLE EXEMP-  
11 TION.—No company that engages in any activ-  
12 ity or controls any shares under subsection (f)  
13 of section 6 may engage in any activity or own  
14 any shares pursuant to this paragraph or para-  
15 graph (1).

16 “(2) COMMODITIES.—

17 “(A) IN GENERAL.—Notwithstanding sec-  
18 tion 4(a), a wholesale financial holding company  
19 which was predominately engaged as of Janu-  
20 ary 1, 1997, in financial activities in the United  
21 States (or any successor to any such company)  
22 may engage in, or directly or indirectly own or  
23 control shares of a company engaged in, activi-  
24 ties related to the trading, sale, or investment  
25 in commodities and underlying physical prop-

1           erties that were not permissible for bank hold-  
2           ing companies to conduct in the United States  
3           as of January 1, 1997, if such wholesale finan-  
4           cial holding company, or any subsidiary of such  
5           holding company, was engaged directly, indi-  
6           rectly, or through any such company in any of  
7           such activities as of January 1, 1997, in the  
8           United States.

9           “(B) LIMITATION.—The attributed aggre-  
10          gate consolidated assets of a wholesale financial  
11          holding company held under the authority  
12          granted under this paragraph and not otherwise  
13          permitted to be held by all wholesale financial  
14          holding companies under this section may not  
15          exceed 5 percent of the total consolidated assets  
16          of the wholesale financial holding company, ex-  
17          cept that the Board may increase such percent-  
18          age of total consolidated assets by such  
19          amounts and under such circumstances as the  
20          Board considers appropriate, consistent with  
21          the purposes of this Act.

22          “(3) CROSS MARKETING RESTRICTIONS.—A  
23          wholesale financial holding company shall not per-  
24          mit—

1           “(A) any company whose shares it owns or  
 2           controls pursuant to paragraph (1) or (2) to  
 3           offer or market any product or service of an af-  
 4           filiated wholesale financial institution; or

5           “(B) any affiliated wholesale financial in-  
 6           stitution to offer or market any product or serv-  
 7           ice of any company whose shares are owned or  
 8           controlled by such wholesale financial holding  
 9           company pursuant to such paragraphs.

10       “(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-  
 11       SALE FINANCIAL HOLDING COMPANY.—

12           “(1) IN GENERAL.—Any foreign bank, or any  
 13       company that owns or controls a foreign bank,  
 14       that—

15           “(A) operates a branch, agency, or com-  
 16       mercial lending company in the United States,  
 17       including a foreign bank or company that owns  
 18       or controls a wholesale financial institution; and

19           “(B) owns, controls, or is affiliated with a  
 20       security affiliate that engages in underwriting  
 21       corporate equity securities,

22       may request a determination from the Board that  
 23       such bank or company be treated as a wholesale fi-  
 24       nancial holding company for purposes of subsection  
 25       (c).

1           “(2) CONDITIONS FOR TREATMENT AS A  
2       WHOLESALE FINANCIAL HOLDING COMPANY.—A for-  
3       foreign bank and a company that owns or controls a  
4       foreign bank may not be treated as a wholesale fi-  
5       nancial holding company unless the bank and com-  
6       pany meet and continue to meet the following cri-  
7       teria:

8           “(A) NO INSURED DEPOSITS.—No deposits  
9       held directly by a foreign bank or through an  
10      affiliate (other than an institution described in  
11      subparagraph (D) or (F) of section 2(c)(2)) are  
12      insured under the Federal Deposit Insurance  
13      Act.

14          “(B) CAPITAL STANDARDS.—The foreign  
15      bank meets risk-based capital standards com-  
16      parable to the capital standards required for a  
17      wholesale financial institution, giving due re-  
18      gard to the principle of national treatment and  
19      equality of competitive opportunity.

20          “(C) TRANSACTION WITH AFFILIATES.—  
21      Transactions between a branch, agency, or com-  
22      mercial lending company subsidiary of the for-  
23      eign bank in the United States, and any securi-  
24      ties affiliate or company in which the foreign  
25      bank (or any company that owns or controls

1       such foreign bank) has invested pursuant to  
2       subsection (d) comply with the provisions of  
3       sections 23A and 23B of the Federal Reserve  
4       Act in the same manner and to the same extent  
5       as such transactions would be required to com-  
6       ply with such sections if the bank were a mem-  
7       ber bank.

8       “(3) TREATMENT AS A WHOLESALE FINANCIAL  
9       INSTITUTION.—Any foreign bank which is, or is af-  
10      filiated with a company which is, treated as a whole-  
11      sale financial holding company under this subsection  
12      shall be treated as a wholesale financial institution  
13      for purposes of subsection (c)(4) of this section and  
14      subsections (c)(1)(C) and (c)(3) of section 9B of the  
15      Federal Reserve Act, and any such foreign bank or  
16      company shall be subject to paragraphs (3), (4), and  
17      (5) of section 9B(d) of the Federal Reserve Act, ex-  
18      cept that the Board may adopt such modifications,  
19      conditions, or exemptions as the Board deems appro-  
20      priate, giving due regard to the principle of national  
21      treatment and equality of competitive opportunity.

22      “(4) NONAPPLICABILITY OF OTHER EXEMP-  
23      TION.—Any foreign bank or company which is treat-  
24      ed as a wholesale financial holding company under



1       this subsection shall not be eligible for any exception  
2       described in section 2(h).

3           “(5) SUPERVISION OF FOREIGN BANK WHICH  
4       MAINTAINS NO BANKING PRESENCE OTHER THAN  
5       CONTROL OF A WHOLESALE FINANCIAL INSTITU-  
6       TION.—A foreign bank that owns or controls a  
7       wholesale financial institution but does not operate  
8       a branch, agency, or commercial lending company in  
9       the United States (and any company that owns or  
10      controls such foreign bank) may request a deter-  
11      mination from the Board that such bank or com-  
12      pany be treated as a wholesale financial holding  
13      company for purposes of subsection (c), except that  
14      such bank or company shall be subject to the restric-  
15      tions of paragraphs (2)(A), (3), and (4) of this sub-  
16      section.

17          “(6) NO EFFECT ON OTHER PROVISIONS.—This  
18      section shall not be construed as limiting the author-  
19      ity of the Board under the International Banking  
20      Act of 1978 with respect to the regulation, super-  
21      vision, or examination of foreign banks and their of-  
22      fices and affiliates in the United States.

23          “(7) APPLICABILITY OF COMMUNITY REINVEST-  
24      MENT ACT OF 1977.—The branches in the United  
25      States of a foreign bank that is, or is affiliated with

1 a company that is, treated as a wholesale financial  
2 holding company shall be subject to section  
3 9B(b)(11) of the Federal Reserve Act as if the for-  
4 eign bank were a wholesale financial institution  
5 under such section. The Board and the Comptroller  
6 of the Currency shall apply the provisions of sections  
7 803(2), 804, and 807(1) of the Community Rein-  
8 vestment Act of 1977 to branches of foreign banks  
9 which receive only such deposits as are permissible  
10 for receipt by a corporation organized under section  
11 25A of the Federal Reserve Act, in the same manner  
12 and to the same extent such sections apply to such  
13 a corporation.”.

14 (b) UNINSURED STATE BANKS.—Section 9 of the  
15 Federal Reserve Act (U.S.C. 321 et seq.) is amended by  
16 adding at the end the following new paragraph:

17 “(24) ENFORCEMENT AUTHORITY OVER UNIN-  
18 SURED STATE MEMBER BANKS.—Section 3(u) of the  
19 Federal Deposit Insurance Act, subsections (j) and  
20 (k) of section 7 of such Act, and subsections (b)  
21 through (n), (s), (u), and (v) of section 8 of such  
22 Act shall apply to an uninsured State member bank  
23 in the same manner and to the same extent such  
24 provisions apply to an insured State member bank  
25 and any reference in any such provision to ‘insured

1 depository institution’ shall be deemed to be a ref-  
2 erence to ‘uninsured State member bank’ for pur-  
3 poses of this paragraph.”.

4 **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

5 (a) FEDERAL RESERVE ACT.—The last sentence of  
6 the eighth undesignated paragraph of section 9 of the  
7 Federal Reserve Act (12 U.S.C. 326) is amended to read  
8 as follows: “The Board of Governors of the Federal Re-  
9 serve System, at its discretion, may furnish reports of ex-  
10 amination or other confidential supervisory information  
11 concerning State member banks or any other entities ex-  
12 amined under any other authority of the Board to any  
13 Federal or State authorities with supervisory or regulatory  
14 authority over the examined entity, to officers, directors,  
15 or receivers of the examined entity, and to any other per-  
16 son that the Board determines to be proper.”.

17 (b) COMMODITY FUTURES TRADING COMMISSION.—

18 (1) Section 1101(7) of the Right to Financial  
19 Privacy Act of 1978 (12 U.S.C. 3401(7)) is amend-  
20 ed—

21 (A) by redesignating subparagraphs (G)  
22 and (H) as subparagraphs (H) and (I), respec-  
23 tively; and

24 (B) by inserting after subparagraph (F)  
25 the following new subparagraph:

1                   “(G) the Commodity Futures Trading  
2                   Commission; or” and

3                   (2) Section 1112(e) of the Right to Financial  
4                   Privacy Act (12 U.S.C. 3412(e)) is amended by  
5                   striking “and the Securities and Exchange Commis-  
6                   sion” and inserting “, the Securities and Exchange  
7                   Commission, and the Commodity Futures Trading  
8                   Commission”.

9   **SEC. 133. CONFORMING AMENDMENTS.**

10           (a) BANK HOLDING COMPANY ACT OF 1956.—

11                   (1) DEFINITIONS.—Section 2 of the Bank  
12                   Holding Company Act of 1956 (12 U.S.C. 1842) is  
13                   amended by adding at the end the following new  
14                   subsections:

15                   “(p) WHOLESALE FINANCIAL INSTITUTION.—The  
16                   term ‘wholesale financial institution’ means a wholesale fi-  
17                   nancial institution subject to section 9B of the Federal  
18                   Reserve Act.

19                   “(q) COMMISSION.—The term ‘Commission’ means  
20                   the Securities and Exchange Commission.

21                   “(r) DEPOSITORY INSTITUTION.—The term ‘deposi-  
22                   tory institution’—

23                           “(1) has the meaning given to such term in sec-  
24                   tion 3 of the Federal Deposit Insurance Act; and

25                           “(2) includes a wholesale financial institution.”.

1           (2) DEFINITION OF BANK INCLUDES WHOLE-  
 2           SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of  
 3           the Bank Holding Company Act of 1956 (12 U.S.C.  
 4           1841(c)(1)) is amended by adding at the end the fol-  
 5           lowing new subparagraph:

6                       “(C) A wholesale financial institution.”.

7           (3) INCORPORATED DEFINITIONS.—Section  
 8           2(n) of the Bank Holding Company Act of 1956 (12  
 9           U.S.C. 1841(n)) is amended by inserting “‘insured  
 10          bank’,” after “‘in danger of default’,”.

11          (4) EXCEPTION TO DEPOSIT INSURANCE RE-  
 12          QUIREMENT.—Section 3(e) of the Bank Holding  
 13          Company Act of 1956 (12 U.S.C. 1842(e)) is  
 14          amended by adding at the end the following: “This  
 15          subsection shall not apply to a wholesale financial  
 16          institution.”.

17          (b) FEDERAL DEPOSIT INSURANCE ACT.—Section  
 18          3(q)(2)(A) of the Federal Deposit Insurance Act (12  
 19          U.S.C. 1813(q)(2)(A)) is amended to read as follows:

20                       “(A) any State member insured bank (ex-  
 21                       cept a District bank) and any wholesale finan-  
 22                       cial institution as authorized pursuant to sec-  
 23                       tion 9B of the Federal Reserve Act;”.

1       **CHAPTER 2—WHOLESALE FINANCIAL**  
2                                   **INSTITUTIONS**

3   **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

4       (a) NATIONAL WHOLESALE FINANCIAL INSTITU-  
5   TIONS.—

6           (1) IN GENERAL.—Chapter one of title LXII of  
7       the Revised Statutes of the United States (12  
8       U.S.C. 21 et seq.) is amended by inserting after sec-  
9       tion 5136A (as added by section 121(a) of this title)  
10      the following new section:

11   **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
12                                   **TIONS.**

13       “(a) AUTHORIZATION OF THE COMPTROLLER RE-  
14   QUIRED.—A national bank may apply to the Comptroller  
15   on such forms and in accordance with such regulations  
16   as the Comptroller may prescribe, for permission to oper-  
17   ate as a national wholesale financial institution.

18       “(b) REGULATION.—A national wholesale financial  
19   institution may exercise, in accordance with such institu-  
20   tion’s articles of incorporation and regulations issued by  
21   the Comptroller, all the powers and privileges of a national  
22   bank formed in accordance with section 5133 of the Re-  
23   vised Statutes of the United States, subject to section 9B  
24   of the Federal Reserve Act and the limitations and restric-  
25   tions contained therein.

1       “(c) COMMUNITY REINVESTMENT ACT OF 1977.—A  
2 national wholesale financial institution shall be subject to  
3 the Community Reinvestment Act of 1977.

4       “(d) EXAMINATION REPORTS.—The Comptroller of  
5 the Currency shall, to the fullest extent possible, use the  
6 report of examinations made by the Board of Governors  
7 of the Federal Reserve System of a wholesale financial in-  
8 stitution.”.

9               (2) CLERICAL AMENDMENT.—The table of sec-  
10 tions for chapter one of title LXII of the Revised  
11 Statutes of the United States is amended by insert-  
12 ing after the item relating to section 5136A (as  
13 added by section 121(d) of this title) the following  
14 new item:

“5136B. National wholesale financial institutions.”.

15       (b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—  
16 The Federal Reserve Act (12 U.S.C. 221 et seq.) is  
17 amended by inserting after section 9A the following new  
18 section:

19       **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

20       “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-  
21 SALE FINANCIAL INSTITUTION.—

22               “(1) APPLICATION REQUIRED.—

23                       “(A) IN GENERAL.—Any bank may apply  
24 to the Board of Governors of the Federal Re-  
25 serve System to become a wholesale financial

1 institution and, as a wholesale financial institu-  
2 tion, to subscribe to the stock of the Federal re-  
3 serve bank organized within the district where  
4 the applying bank is located.

5 “(B) TREATMENT AS MEMBER BANK.—  
6 Any application under subparagraph (A) shall  
7 be treated as an application under, and shall be  
8 subject to the provisions of section 9.

9 “(2) INSURANCE TERMINATION.—No bank the  
10 deposits of which are insured under the Federal De-  
11 posit Insurance Act may become a wholesale finan-  
12 cial institution unless it has met all requirements  
13 under that Act for voluntary termination of deposit  
14 insurance.

15 “(b) GENERAL REQUIREMENTS APPLICABLE TO  
16 WHOLESALE FINANCIAL INSTITUTIONS.—

17 “(1) FEDERAL RESERVE ACT.—Except as oth-  
18 erwise provided in this section, wholesale financial  
19 institutions shall be member banks and shall be sub-  
20 ject to the provisions of this Act that apply to mem-  
21 ber banks to the same extent and in the same man-  
22 ner as State member insured banks, except that a  
23 wholesale financial institution may terminate mem-  
24 bership under this Act only with the prior written  
25 approval of the Board and on terms and conditions



1       that the Board determines are appropriate to carry  
2       out the purposes of this Act.

3           “(2) PROMPT CORRECTIVE ACTION.—A whole-  
4       sale financial institution shall be deemed to be an in-  
5       sured depository institution for purposes of section  
6       38 of the Federal Deposit Insurance Act except  
7       that—

8           “(A) the relevant capital levels and capital  
9       measures for each capital category shall be the  
10      levels specified by the Board for wholesale fi-  
11      nancial institutions; and

12          “(B) all references to the appropriate Fed-  
13      eral banking agency or to the Corporation in  
14      that section shall be deemed to be references to  
15      the Board.

16          “(3) ENFORCEMENT AUTHORITY.—Subsections  
17      (j) and (k) of section 7, subsections (b) through (n),  
18      (s), and (v) of section 8, and section 19 of the Fed-  
19      eral Deposit Insurance Act shall apply to a wholesale  
20      financial institution in the same manner and to the  
21      same extent as such provisions apply to State mem-  
22      ber insured banks and any reference in such sections  
23      to an insured depository institution shall be deemed  
24      to include a reference to a wholesale financial insti-  
25      tution.

1           “(4) CERTAIN OTHER STATUTES APPLICA-  
2       BLE.—A wholesale financial institution shall be  
3       deemed to be a banking institution, and the Board  
4       shall be the appropriate Federal banking agency for  
5       such bank and all such bank’s affiliates, for pur-  
6       poses of the International Lending Supervision Act.

7           “(5) BANK MERGER ACT.—A wholesale finan-  
8       cial institution shall be subject to sections 18(c) and  
9       44 of the Federal Deposit Insurance Act in the same  
10      manner and to the same extent the wholesale finan-  
11      cial institution would be subject to such sections if  
12      the institution were a State member insured bank.

13          “(6) BRANCHING.—Notwithstanding any other  
14      provision of law, a wholesale financial institution  
15      may establish and operate a branch at any location  
16      on such terms and conditions as established by the  
17      Board and, in the case of a State-chartered whole-  
18      sale financial institution, with the approval of the  
19      Board, and, in the case of a national bank wholesale  
20      financial institution, with the approval of the Comp-  
21      troller of the Currency.

22          “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES  
23      OF WHOLESALE FINANCIAL INSTITUTIONS.—

24               “(A) GENERAL.—A State-chartered whole-  
25      sale financial institution shall be deemed a

1 State bank and an insured State bank and a  
 2 national wholesale financial institution shall be  
 3 deemed a national bank for purposes of para-  
 4 graphs (1), (2), and (3) of section 24(j) of the  
 5 Federal Deposit Insurance Act.

6 “(B) DEFINITIONS.—The following defini-  
 7 tions shall apply solely for purposes of applying  
 8 paragraph (1):

9 “(i) HOME STATE.—The term ‘home  
 10 State’ means—

11 “(I) with respect to a national  
 12 wholesale financial institution, the  
 13 State in which the main office of the  
 14 institution is located; and

15 “(II) with respect to a State-  
 16 chartered wholesale financial institu-  
 17 tion, the State by which the institu-  
 18 tion is chartered.

19 “(ii) HOST STATE.—The term ‘host  
 20 State’ means a State, other than the home  
 21 State of the wholesale financial institution,  
 22 in which the institution maintains, or seeks  
 23 to establish and maintain, a branch.

24 “(iii) OUT-OF-STATE BANK.—The  
 25 term ‘out-of-State bank’ means, with re-

1           spect to any State, a wholesale financial  
2           institution whose home State is another  
3           State.

4           “(8) DISCRIMINATION REGARDING INTEREST  
5           RATES.—Section 27 of the Federal Deposit Insur-  
6           ance Act shall apply to State-chartered wholesale fi-  
7           nancial institutions in the same manner and to the  
8           same extent as such provisions apply to State mem-  
9           ber insured banks and any reference in such section  
10          to a State-chartered insured depository institution  
11          shall be deemed to include a reference to a State-  
12          chartered wholesale financial institution.

13          “(9) PREEMPTION OF STATE LAWS REQUIRING  
14          DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL  
15          INSTITUTIONS.—The appropriate State banking au-  
16          thority may grant a charter to a wholesale financial  
17          institution notwithstanding any State constitution or  
18          statute requiring that the institution obtain insur-  
19          ance of its deposits and any such State constitution  
20          or statute is hereby preempted solely for purposes of  
21          this paragraph.

22          “(10) PARITY FOR WHOLESALE FINANCIAL IN-  
23          STITUTIONS.—A State bank that is a wholesale fi-  
24          nancial institution under this section shall have all  
25          of the rights, powers, privileges, and immunities (in-

1 including those derived from status as a federally  
2 chartered institution) of and as if it were a national  
3 bank, subject to such terms and conditions as estab-  
4 lished by the Board.

5 “(11) COMMUNITY REINVESTMENT ACT OF  
6 1977.—A State wholesale financial institution shall  
7 be subject to the Community Reinvestment Act of  
8 1977.

9 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO  
10 WHOLESALE FINANCIAL INSTITUTIONS.—

11 “(1) LIMITATIONS ON DEPOSITS.—

12 “(A) MINIMUM AMOUNT.—

13 “(i) IN GENERAL.—No wholesale fi-  
14 nancial institution may receive initial de-  
15 posits of \$100,000 or less, other than on  
16 an incidental and occasional basis.

17 “(ii) LIMITATION ON DEPOSITS OF  
18 LESS THAN \$100,000.—No wholesale finan-  
19 cial institution may receive initial deposits  
20 of \$100,000 or less if such deposits con-  
21 stitute more than 5 percent of the institu-  
22 tion’s total deposits.

23 “(B) NO DEPOSIT INSURANCE.—No depos-  
24 its held by a wholesale financial institution shall

1 be insured deposits under the Federal Deposit  
2 Insurance Act.

3 “(C) ADVERTISING AND DISCLOSURE.—  
4 The Board shall prescribe regulations pertain-  
5 ing to advertising and disclosure by wholesale  
6 financial institutions to ensure that each deposi-  
7 tor is notified that deposits at the wholesale fi-  
8 nancial institution are not federally insured or  
9 otherwise guaranteed by the United States Gov-  
10 ernment.

11 “(2) MINIMUM CAPITAL LEVELS APPLICABLE  
12 TO WHOLESALE FINANCIAL INSTITUTIONS.—The  
13 Board shall, by regulation, adopt capital require-  
14 ments for wholesale financial institutions—

15 “(A) to account for the status of wholesale  
16 financial institutions as institutions that accept  
17 deposits that are not insured under the Federal  
18 Deposit Insurance Act; and

19 “(B) to provide for the safe and sound op-  
20 eration of the wholesale financial institution  
21 without undue risk to creditors or other per-  
22 sons, including Federal reserve banks, engaged  
23 in transactions with the bank.

24 “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
25 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-

1       tion to any requirement otherwise applicable to State  
2       member insured banks or applicable, under this sec-  
3       tion, to wholesale financial institutions, the Board  
4       may impose, by regulation or order, upon wholesale  
5       financial institutions—

6               “(A) limitations on transactions, direct or  
7       indirect, with affiliates to prevent—

8               “(i) the transfer of risk to the deposit  
9       insurance funds; or

10              “(ii) an affiliate from gaining access  
11       to, or the benefits of, credit from a Federal  
12       reserve bank, including overdrafts at a  
13       Federal reserve bank;

14              “(B) special clearing balance requirements;  
15       and

16              “(C) any additional requirements that the  
17       Board determines to be appropriate or nec-  
18       essary to—

19              “(i) promote the safety and soundness  
20       of the wholesale financial institution or any  
21       insured depository institution affiliate of  
22       the wholesale financial institution;

23              “(ii) prevent the transfer of risk to  
24       the deposit insurance funds; or

1                   “(iii) protect creditors and other per-  
2                   sons, including Federal reserve banks, en-  
3                   gaged in transactions with the wholesale fi-  
4                   nancial institution.

5                   “(4) EXEMPTIONS FOR WHOLESALE FINANCIAL  
6                   INSTITUTIONS.—The Board may, by regulation or  
7                   order, exempt any wholesale financial institution  
8                   from any provision applicable to a member bank  
9                   that is not a wholesale financial institution, if the  
10                  Board finds that such exemption is not inconsistent  
11                  with—

12                  “(A) the promotion of the safety and  
13                  soundness of the wholesale financial institution  
14                  or any insured depository institution affiliate of  
15                  the wholesale financial institution;

16                  “(B) the protection of the deposit insur-  
17                  ance funds; and

18                  “(C) the protection of creditors and other  
19                  persons, including Federal reserve banks, en-  
20                  gaged in transactions with the wholesale finan-  
21                  cial institution.

22                  “(5) LIMITATION ON TRANSACTIONS BETWEEN  
23                  A WHOLESALE FINANCIAL INSTITUTION AND AN IN-  
24                  SURED BANK.—For purposes of section 23A(d)(1) of  
25                  the Federal Reserve Act, a wholesale financial insti-



1       tution that is affiliated with an insured bank shall  
2       not be a bank.

3           “(6) NO EFFECT ON OTHER PROVISIONS.—This  
4       section shall not be construed as limiting the  
5       Board’s authority over member banks under any  
6       other provision of law, or to create any obligation for  
7       any Federal reserve bank to make, increase, renew,  
8       or extend any advance or discount under this Act to  
9       any member bank or other depository institution.

10       “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

11           “(1) IN GENERAL.—A wholesale financial insti-  
12       tution shall be well capitalized and well managed.

13           “(2) NOTICE TO COMPANY.—The Board shall  
14       promptly provide notice to a company that controls  
15       a wholesale financial institution whenever such  
16       wholesale financial institution is not well capitalized  
17       or well managed.

18           “(3) AGREEMENT TO RESTORE INSTITUTION.—

19       Within 45 days of receipt of a notice under para-  
20       graph (2) (or such additional period not to exceed  
21       90 days as the Board may permit), the company  
22       shall execute an agreement acceptable to the Board  
23       to restore the wholesale financial institution to com-  
24       pliance with all of the requirements of paragraph  
25       (1).

1           “(4) LIMITATIONS UNTIL INSTITUTION RE-  
2       STORED.—Until the wholesale financial institution is  
3       restored to compliance with all of the requirements  
4       of paragraph (1), the Board may impose such limi-  
5       tations on the conduct or activities of the company  
6       or any affiliate of the company as the Board deter-  
7       mines to be appropriate under the circumstances.

8           “(5) FAILURE TO RESTORE.—If the company  
9       does not execute and implement an agreement in ac-  
10      cordance with paragraph (3), comply with any limi-  
11      tation imposed under paragraph (4), restore the  
12      wholesale financial institution to well capitalized sta-  
13      tus within 180 days after receipt by the company of  
14      the notice described in paragraph (2), or restore the  
15      wholesale financial institution to well managed sta-  
16      tus within such period as the Board may permit, the  
17      company shall, under such terms and conditions as  
18      may be imposed by the Board and subject to such  
19      extension of time as may be granted in the Board’s  
20      discretion, divest control of its subsidiary depository  
21      institutions.

22           “(6) WELL MANAGED DEFINED.—For purposes  
23      of this subsection, the term ‘well managed’ has the  
24      same meaning as in section 2 of the Bank Holding  
25      Company Act of 1956.

1 “(e) CONSERVATORSHIP AUTHORITY.—

2 “(1) IN GENERAL.—The Board may appoint a  
3 conservator to take possession and control of a  
4 wholesale financial institution to the same extent  
5 and in the same manner as the Comptroller of the  
6 Currency may appoint a conservator for a national  
7 bank under section 203 of the Bank Conservation  
8 Act, and the conservator shall exercise the same  
9 powers, functions, and duties, subject to the same  
10 limitations, as are provided under such Act for con-  
11 servators of national banks.

12 “(2) BOARD AUTHORITY.—The Board shall  
13 have the same authority with respect to any con-  
14 servator appointed under paragraph (1) and the  
15 wholesale financial institution for which such con-  
16 servator has been appointed as the Comptroller of  
17 the Currency has under the Bank Conservation Act  
18 with respect to a conservator appointed under such  
19 Act and a national bank for which the conservator  
20 has been appointed.

21 “(f) EXCLUSIVE JURISDICTION.—Subsections (c) and  
22 (e) of section 43 of the Federal Deposit Insurance Act  
23 shall not apply to any wholesale financial institution.”.

24 (c) VOLUNTARY TERMINATION OF INSURED STATUS  
25 BY CERTAIN INSTITUTIONS.—

1           (1) SECTION 8 DESIGNATIONS.—Section 8(a) of  
2       the Federal Deposit Insurance Act (12 U.S.C.  
3       1818(a)) is amended—

4                   (A) by striking paragraph (1); and

5                   (B) by redesignating paragraphs (2)  
6       through (10) as paragraphs (1) through (9), re-  
7       spectively.

8           (2) VOLUNTARY TERMINATION OF INSURED  
9       STATUS.—The Federal Deposit Insurance Act (12  
10      U.S.C. 1811 et seq.) is amended by inserting after  
11      section 8 the following new section:

12   **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**  
13                   **SURED DEPOSITORY INSTITUTION.**

14           “(a) IN GENERAL.—Except as provided in subsection  
15   (b), an insured State bank or a national bank may volun-  
16   tarily terminate such bank’s status as an insured deposi-  
17   tory institution in accordance with regulations of the Cor-  
18   poration if—

19                   “(1) the bank provides written notice of the  
20      bank’s intent to terminate such insured status—

21                           “(A) to the Corporation and the Board of  
22                   Governors of the Federal Reserve System not  
23                   less than 6 months before the effective date of  
24                   such termination; and

1           “(B) to all depositors at such bank, not  
2           less than 6 months before the effective date of  
3           the termination of such status; and

4           “(2) either—

5           “(A) the deposit insurance fund of which  
6           such bank is a member equals or exceeds the  
7           fund’s designated reserve ratio as of the date  
8           the bank provides a written notice under para-  
9           graph (1) and the Corporation determines that  
10          the fund will equal or exceed the applicable des-  
11          ignated reserve ratio for the 2 semiannual as-  
12          sessment periods immediately following such  
13          date; or

14          “(B) the Corporation and the Board of  
15          Governors of the Federal Reserve System ap-  
16          proved the termination of the bank’s insured  
17          status and the bank pays an exit fee in accord-  
18          ance with subsection (e).

19          “(b) EXCEPTION.—Subsection (a) shall not apply  
20          with respect to—

21                 “(1) an insured savings association; or

22                 “(2) an insured branch that is required to be  
23          insured under subsection (a) or (b) of section 6 of  
24          the International Banking Act of 1978.

1       “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—  
 2 Any bank that voluntarily elects to terminate the bank’s  
 3 insured status under subsection (a) shall not be eligible  
 4 for insurance on any deposits or any assistance authorized  
 5 under this Act after the period specified in subsection  
 6 (f)(1).

7       “(d) INSTITUTION MUST BECOME WHOLESALE FI-  
 8 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
 9 ACTIVITIES.—Any depository institution which voluntarily  
 10 terminates such institution’s status as an insured depository  
 11 institution under this section may not, upon termination  
 12 of insurance, accept any deposits unless the institution  
 13 is a wholesale financial institution subject to section  
 14 9B of the Federal Reserve Act.

15       “(e) EXIT FEES.—

16               “(1) IN GENERAL.—Any bank that voluntarily  
 17 terminates such bank’s status as an insured depository  
 18 institution under this section shall pay an exit  
 19 fee in an amount that the Corporation determines is  
 20 sufficient to account for the institution’s pro rata  
 21 share of the amount (if any) which would be required  
 22 to restore the relevant deposit insurance fund  
 23 to the fund’s designated reserve ratio as of the date  
 24 the bank provides a written notice under subsection  
 25 (a)(1).

1           “(2) PROCEDURES.—The Corporation shall pre-  
 2       scribe, by regulation, procedures for assessing any  
 3       exit fee under this subsection.

4           “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
 5 AS OF TERMINATION.—

6           “(1) TRANSITION PERIOD.—The insured depos-  
 7       its of each depositor in a State bank or a national  
 8       bank on the effective date of the voluntary termi-  
 9       nation of the bank’s insured status, less all subse-  
 10      quent withdrawals from any deposits of such deposi-  
 11      tor, shall continue to be insured for a period of not  
 12      less than 6 months and not more than 2 years, as  
 13      determined by the Corporation. During such period,  
 14      no additions to any such deposits, and no new de-  
 15      posits in the depository institution made after the ef-  
 16      fective date of such termination shall be insured by  
 17      the Corporation.

18          “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
 19 AND DUTIES.—During the period specified in para-  
 20 graph (1) with respect to any bank, the bank shall  
 21 continue to pay assessments under section 7 as if  
 22 the bank were an insured depository institution. The  
 23 bank shall, in all other respects, be subject to the  
 24 authority of the Corporation and the duties and obli-  
 25 gations of an insured depository institution under

1       this Act during such period, and in the event that  
2       the bank is closed due to an inability to meet the de-  
3       mands of the bank’s depositors during such period,  
4       the Corporation shall have the same powers and  
5       rights with respect to such bank as in the case of  
6       an insured depository institution.

7       “(g) ADVERTISEMENTS.—

8               “(1) IN GENERAL.—A bank that voluntarily  
9       terminates the bank’s insured status under this sec-  
10      tion shall not advertise or hold itself out as having  
11      insured deposits, except that the bank may advertise  
12      the temporary insurance of deposits under sub-  
13      section (f) if, in connection with any such advertise-  
14      ment, the advertisement also states with equal prom-  
15      inence that additions to deposits and new deposits  
16      made after the effective date of the termination are  
17      not insured.

18              “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,  
19      AND SECURITIES.—Any certificate of deposit or  
20      other obligation or security issued by a State bank  
21      or a national bank after the effective date of the vol-  
22      untary termination of the bank’s insured status  
23      under this section shall be accompanied by a con-  
24      spicuous, prominently displayed notice that such cer-



1       tificate of deposit or other obligation or security is  
2       not insured under this Act.

3       “(h) NOTICE REQUIREMENTS.—

4               “(1) NOTICE TO THE CORPORATION.—The no-  
5       tice required under subsection (a)(1)(A) shall be in  
6       such form as the Corporation may require.

7               “(2) NOTICE TO DEPOSITORS.—The notice re-  
8       quired under subsection (a)(1)(B) shall be—

9                       “(A) sent to each depositor’s last address  
10       of record with the bank; and

11                      “(B) in such manner and form as the Cor-  
12       poration finds to be necessary and appropriate  
13       for the protection of depositors.”.

14       (3) DEFINITION.—Section 19(b)(1)(A)(i) of the  
15       Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is  
16       amended by inserting “, or any wholesale financial  
17       institution subject to section 9B of this Act” after  
18       “such Act”.

1     **Subtitle E—Preservation of FTC**  
2                     **Authority**

3     **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**  
4                     **ACT OF 1956 TO MODIFY NOTIFICATION AND**  
5                     **POST-APPROVAL WAITING PERIOD FOR SEC-**  
6                     **TION 3 TRANSACTIONS.**

7         Section 11(b)(1) of the Bank Holding Company Act  
8 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting  
9 “and, if the transaction also involves an acquisition under  
10 section 4 or section 6, the Board shall also notify the Fed-  
11 eral Trade Commission of such approval” before the pe-  
12 riod at the end of the first sentence.

13     **SEC. 142. INTERAGENCY DATA SHARING.**

14         To the extent not prohibited by other law, the Comp-  
15 troller of the Currency, the Director of the Office of Thrift  
16 Supervision, the Federal Deposit Insurance Corporation,  
17 and the Board of Governors of the Federal Reserve Sys-  
18 tem shall make available to the Attorney General and the  
19 Federal Trade Commission any data in the possession of  
20 any such banking agency that the antitrust agency deems  
21 necessary for antitrust review of any transaction requiring  
22 notice to any such antitrust agency or the approval of such  
23 agency under section 3, 4, or 6 of the Bank Holding Com-  
24 pany Act of 1956, section 18(c) of the Federal Deposit  
25 Insurance Act, the National Bank Consolidation and

1 Merger Act, section 10 of the Home Owners' Loan Act,  
2 or the antitrust laws.

3 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**  
4 **AND AFFILIATES.**

5 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-  
6 SION JURISDICTION.—Any person which directly or indi-  
7 rectly controls, is controlled directly or indirectly by, or  
8 is directly or indirectly under common control with, any  
9 bank or savings association (as such terms are defined in  
10 section 3 of the Federal Deposit Insurance Act) and is  
11 not itself a bank or savings association shall not be  
12 deemed to be a bank or savings association for purposes  
13 of the Federal Trade Commission Act or any other law  
14 enforced by the Federal Trade Commission.

15 (b) SAVINGS PROVISION.—No provision of this sec-  
16 tion shall be construed as restricting the authority of any  
17 Federal banking agency (as defined in section 3 of the  
18 Federal Deposit Insurance Act) under any Federal bank-  
19 ing law, including section 8 of the Federal Deposit Insur-  
20 ance Act.

21 (c) HART–SCOTT–RODINO AMENDMENT.—Section  
22 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is  
23 amended by inserting before the semicolon at the end  
24 thereof the following: “, except that a portion of a trans-  
25 action is not exempt under this paragraph if such portion

1 of the transaction (A) requires notice under section 6 of  
2 the Bank Holding Company Act of 1956; and (B) does  
3 not require approval under section 3 or 4 of the Bank  
4 Holding Company Act of 1956”.

5 **SEC. 144. ANNUAL GAO REPORT.**

6 (a) IN GENERAL.—By the end of the 1-year period  
7 beginning on the date of the enactment of this Act and  
8 annually thereafter, the Comptroller General of the United  
9 States shall submit a report to the Congress on market  
10 concentration in the financial services industry and its im-  
11 pact on consumers.

12 (b) ANALYSIS.—Each report submitted under sub-  
13 section (a) shall contain an analysis of—

14 (1) the positive and negative effects of affili-  
15 ations between various types of financial companies,  
16 and of acquisitions pursuant to this Act and the  
17 amendments made by this Act to other provisions of  
18 law, including any positive or negative effects on  
19 consumers, area markets, and submarkets thereof or  
20 on registered securities brokers and dealers which  
21 have been purchased by depository institutions or  
22 depository institution holding companies;

23 (2) the changes in business practices and the  
24 effects of any such changes on the availability of  
25 venture capital, consumer credit, and other financial

1 services or products and the availability of capital  
 2 and credit for small businesses; and

3 (3) the acquisition patterns among depository  
 4 institutions, depository institution holding compa-  
 5 nies, securities firms, and insurance companies in-  
 6 cluding acquisitions among the largest 20 percent of  
 7 firms and acquisitions within regions or other lim-  
 8 ited geographical areas.

9 **Subtitle F—Applying the Principles**  
 10 **of National Treatment and**  
 11 **Equality of Competitive Oppor-**  
 12 **tunity to Foreign Banks and**  
 13 **Foreign Financial Institutions**

14 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**  
 15 **MENT AND EQUALITY OF COMPETITIVE OP-**  
 16 **PORTUNITY TO FOREIGN BANKS THAT ARE**  
 17 **FINANCIAL HOLDING COMPANIES.**

18 Section 8(c) of the International Banking Act of  
 19 1978 (12 U.S.C. 3106(c)) is amended by adding at the  
 20 end the following new paragraph:

21 “(3) TERMINATION OF GRANDFATHERED  
 22 RIGHTS.—

23 “(A) IN GENERAL.—If any foreign bank or  
 24 foreign company files a declaration under sec-  
 25 tion 6(b)(1)(E) or which receives a determina-

tion under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

“(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1998, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those

imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.”.

**SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.**

Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:

“(i) **VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.**—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.”.

**Subtitle G—Federal Home Loan Bank System**

**SEC. 161. FEDERAL HOME LOAN BANKS.**

The first sentence of section 3 of the Federal Home Loan Bank Act (12 U.S.C. 1423) is amended—

1           (1) by striking “the continental United States”  
2           and all that follows through the “eight”; and

3           (2) by inserting “the States into not less than  
4           1” before “nor”.

5 **SEC. 162. MEMBERSHIP AND COLLATERAL.**

6           (a) Subsection (f) of section 5 of the Home Owners’  
7           Loan Act (12 U.S.C. 1464) is amended to read as follows:

8           “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—  
9           A Federal savings association may become a member, of  
10          the Federal Home Loan Bank System, and shall qualify  
11          for such membership in the manner provided by the Fed-  
12          eral Home Loan Bank Act, beginning January 1, 1999.”.

13          (b) Section 10(a)(5) of the Federal Home Loan Bank  
14          Act (12 U.S.C. 1430(a)(5)) is amended—

15               (1) in the second sentence, by striking “and the  
16               Board”; and

17               (2) in the third sentence, by striking “Board”  
18               and inserting “Bank”.

19          (c) Section 10(a) of the Federal Home Loan Bank  
20          Act (12 U.S.C. 1430(a)) is amended—

21               (1) in the second sentence, by striking “All  
22               long-term advances” and inserting “Except as pro-  
23               vided in the succeeding sentence, all long-term ad-  
24               vances”;



1           (2) by inserting after the second sentence, the  
2           following sentence: “Notwithstanding the preceding  
3           sentence, long-term advances may be made to mem-  
4           bers insured by the Federal Deposit Insurance Cor-  
5           poration which have less than \$500,000,000 in total  
6           assets for the purpose of funding small businesses,  
7           agriculture, rural development, or low-income com-  
8           munity development (as defined by the Board).”;  
9           and

10           (3) by redesignating paragraph (5) as para-  
11           graph (6) and inserting after paragraph (4) the fol-  
12           lowing new paragraph:

13           “(5) In the case of any member insured by the  
14           Federal Deposit Insurance Corporation which has  
15           total assets of less than \$500,000,000, secured loans  
16           for small business, agriculture, rural development, or  
17           low-income community development, or securities  
18           representing a whole interest in such secured  
19           loans.”.

20           (d) Section 4(a) of the Federal Home Loan Bank Act  
21           (12 U.S.C. 1424(a)) is amended by adding at the end the  
22           following new paragraph:

23           “(3) ELIGIBILITY REQUIREMENTS FOR COMMU-  
24           NITY FINANCIAL INSTITUTIONS.—The requirements  
25           of paragraph (2) (other than subparagraph (B) of

1       such paragraph) shall not apply to any insured de-  
2       pository institution which has total assets of less  
3       than \$500,000,000.

4       (e) Section 10 of the Federal Home Loan Bank Act  
5       (12 U.S.C. 1430) is amended by striking the first of the  
6       2 subsections designated as subsection (e) (relating to  
7       qualified thrift lender status).

8       **SEC. 163. THE OFFICE OF FINANCE.**

9       The Federal Home Loan Bank Act (12 U.S.C. 1421)  
10      is amended by inserting after section 4 the following new  
11      section:

12      **“SEC. 5. THE OFFICE OF FINANCE.**

13          “(a) OPERATION.—The Federal home loan banks  
14      shall operate jointly an office of finance (hereafter in this  
15      section referred to as the ‘Office’) to issue the notes,  
16      bonds, and debentures of the Federal home loan banks  
17      in accordance with this Act.

18          “(b) POWERS.—Subject to the other provisions of  
19      this Act and such safety and soundness regulations as the  
20      Finance Board may prescribe, the Office shall be author-  
21      ized by the Federal home loan banks to act as the agent  
22      of such banks to issue Federal home loan bank notes,  
23      bonds and debentures pursuant to section 11 of this Act  
24      on behalf of the banks.

25          “(c) CENTRAL BOARD OF DIRECTORS.—

1           “(1) ESTABLISHMENT.—The Federal home  
2           loan banks shall establish a central board of direc-  
3           tors of the Office to administer the affairs of the Of-  
4           fice in accordance with the provisions of this Act.

5           “(2) COMPOSITION OF BOARD.—Each Federal  
6           home loan bank shall annually select one individual  
7           who, as of the time of the election, is an officer or  
8           director of such bank to serve as a member of the  
9           central board of directors of the Office.

10          “(d) STATUS.—Except to the extent expressly pro-  
11       vided in this Act, the Office shall be treated as a Federal  
12       home loan bank for purposes of any law.”.

13       **SEC. 164. MANAGEMENT OF BANKS.**

14          (a) Subsections (a) and (b) of section 7 of the Federal  
15       Home Loan Bank Act (12 U.S.C. 1427(a) and (b)) are  
16       amended to read as follows:

17          “(a) The management of each Federal home loan  
18       bank shall be vested in a board of 15 directors, nine of  
19       whom shall be elected by the members in accordance with  
20       this section, six of whom shall be appointed by the Board  
21       referred to in section 2A, and all of whom shall be citizens  
22       of the United States and bona fide residents of the district  
23       in which such bank is located. At least two of the Federal  
24       home loan bank directors who are appointed by the Board  
25       shall be representatives chosen from organizations with

1 more than a 2-year history of representing consumer or  
2 community interests on banking services, credit needs,  
3 housing, or financial consumer protections. No Federal  
4 home loan bank director who is appointed pursuant to this  
5 subsection may, during such bank director's term of office,  
6 serve as an officer of any Federal home loan bank or a  
7 director or officer of any member of a bank, or hold  
8 shares, or any other financial interest in, any member of  
9 a bank.

10       “(b) The elective directors shall be divided into three  
11 classes, designated as classes A, B, and C, as nearly equal  
12 in number as possible. Each directorship shall be filled by  
13 a person who is an officer or director of a member located  
14 in that bank's district. Each class shall represent members  
15 of similar asset size, and the Board shall, to the maximum  
16 extent possible, seek to achieve geographic diversity. The  
17 Finance Board shall establish the minimum and maximum  
18 asset size for each class. Any member shall be entitled to  
19 nominate and elect eligible persons for its class of director-  
20 ship; such offices shall be filled from such nominees by  
21 a plurality of the votes which members of each class may  
22 cast for nominees in their corresponding class of directors  
23 in an election held for the purpose of filling such offices.  
24 Each member shall be permitted to cast one vote for each  
25 share of Federal home loan bank stock owned by that

1 member. No person who is an officer or director of a mem-  
2 ber that fails to meet any applicable capital requirement  
3 is eligible to hold the office of Federal Home Loan Bank  
4 director. As used in this subsection, the term “member”  
5 means a member of a Federal home loan bank which was  
6 a member of such Bank as of a record date established  
7 by the Bank.”.

8 (b) Section 7 of the Federal Home Loan Bank Act  
9 (12 U.S.C. 1427) is amended—

10 (1) by striking subsections (c) and (h); and  
11 (2) by redesignating subsections (d), (e), (f),  
12 (g), (i), (j), and (k) as subsections (c), (d), (e), (f),  
13 (g), (h), and (i), respectively.

14 (c) Subsection (c) of section 7 of the Federal Home  
15 Loan Bank Act (12 U.S.C. 1427(d)) (as so redesignated  
16 by subsection (b) of this section) is amended by striking  
17 the first and second sentences and inserting the following  
18 two new sentences: “The term of each position of director  
19 shall be 3 years. No director serving for three consecutive  
20 terms, nor any other officer, director or that member or  
21 any affiliated depository institution, shall be eligible for  
22 another term earlier than 3 years after the expiration of  
23 the last expiring of said 3-year terms. Three elected direc-  
24 tors of different classes as specified by the Finance Board  
25 shall be elected by ballot annually.”.

1       (d) Subsection (d) of section 7 of the Federal Home  
2   Loan Bank Act (12 U.S.C. 1427(e)) (as so redesignated  
3   by subsection (b) of this section) is amended to read as  
4   follows:

5       “(d) TRANSITION PROVISION.—In the first election  
6   after the date of the enactment of the Financial Services  
7   Act of 1998, three directors shall be elected in each of  
8   the 3 classes of elective directorship. The Finance Board  
9   may, in the first election after such date of enactment,  
10   designate the terms of each elected director in each class,  
11   not to exceed 3 years, to assure that, in each subsequent  
12   election, 3 directors from different classes of elective direc-  
13   torships are elected each year.”.

14       (e) Subsection (g) of section 7 of the Federal Home  
15   Loan Bank Act (12 U.S.C. 1427(i)) (as so redesignated  
16   by subsection (b) of this section) is amended by striking  
17   “subject to the approval of the board”.

18   **SEC. 165. ADVANCES TO NONMEMBER BORROWERS.**

19       Section 10b of the Federal Home Loan Bank Act (12  
20   U.S.C. 1430b) is amended—

21           (1) in subsection (a), by striking “(a) IN GEN-  
22   ERAL.—”;

23           (2) by striking the fourth sentence of subsection  
24   (a), and inserting “Notwithstanding the preceding  
25   sentence, if an advance is made for the purpose of

1       facilitating mortgage lending that benefits individ-  
2       uals and families that meet the income requirements  
3       set forth in section 142(d) or 143(f) of the Internal  
4       Revenue Code of 1986, the advance may be  
5       collateralized as provided in section 10(a) of this  
6       Act.”; and

7               (3) by striking subsection (b).

8       **SEC. 166. POWERS AND DUTIES OF BANKS.**

9       (a) Subsection (a) of section 11 of the Federal Home  
10      Loan Bank Act (12 U.S.C. 1431(a)) is amended—

11              (1) by inserting “through the Office of Fi-  
12      nance” after “to issue”; and

13              (2) by striking “Board” after “upon such terms  
14      and conditions as the” and inserting “board of di-  
15      rectors of the bank”.

16      (b) Subsection (b) of section 11 of the Federal Home  
17      Loan Bank Act (12 U.S.C. 1431(b)) is amended to read  
18      as follows:

19              “(b) ISSUANCE OF FEDERAL HOME LOAN BANK  
20      CONSOLIDATED BONDS.—

21              “(1) IN GENERAL.— The Office of Finance may  
22      issue consolidated Federal home loan bank bonds  
23      and other consolidated obligations on behalf of the  
24      banks.

1           “(2) JOINT AND SEVERAL OBLIGATION; TERMS  
2           AND CONDITIONS.—Consolidated obligations issued  
3           by the Office of Finance under paragraph (1)  
4           shall—

5                   “(A) be the joint and several obligations of  
6                   all the Federal home loan banks; and

7                   “(B) shall be issued upon such terms and  
8                   conditions as shall be established by the Office  
9                   of Finance subject to such rules and regulations  
10                  as the Finance Board may prescribe.”.

11          (c) Section 11(f) of the Federal Home Loan Bank  
12          Act (12 U.S.C. 1430(f) (as designated before the redesignig-  
13          nation by subsection (e) of this section) is amended by  
14          striking both commas immediately following “permit” and  
15          inserting “or”.

16          (d) Subsection (i) of section 11 of the Federal Home  
17          Loan Bank Act (12 U.S.C. 1431(i)) is amended by strik-  
18          ing the second undesignated paragraph.

19          (e) Section 11 of the Federal Home Loan Bank Act  
20          (12 U.S.C. 1431) is amended—

21                  (1) by striking subsection (c); and

22                  (2) by redesignating subsections (d) through (k)  
23          as subsections (c) through (j), respectively.



1   **SEC. 167. MERGERS AND CONSOLIDATIONS OF FEDERAL**  
2                   **HOME LOAN BANKS.**

3           Section 26 of the Federal Home Loan Bank Act (12  
4   U.S.C. 1446) is amended by designating the current para-  
5   graph as “(a)” and adding the following new sections:

6           “(b) Nothing in this section shall preclude voluntary  
7   mergers, combinations or consolidation by or among the  
8   Federal home loan banks pursuant to such regulations as  
9   the Finance Board may prescribe.

10          “(c) NUMBER OF ELECTED DIRECTORS OF RESULT-  
11   ING BANK.— Subject to section 7 of this Act, any bank  
12   resulting from a merger, combination, or consolidation  
13   pursuant to this section may have a number of elected di-  
14   rectors equal to or less than the total number of elected  
15   directors of all the banks which participated in such trans-  
16   action (as determined immediately before such trans-  
17   action).

18          “(d) NUMBER OF APPOINTED DIRECTORS OF RE-  
19   SULTING BANK.—The number of appointed directors of  
20   any bank resulting from a merger, combination, or consoli-  
21   dation pursuant to this section shall be a number that is  
22   three less than the number of elected directors.

23          “(e) ADJUSTMENT OF DISTRICT BOUNDARIES.—  
24   After consummation of any merger, combination, or con-  
25   solidation of two or more Federal home loan banks, the  
26   Finance Board shall adjust the districts established in sec-

tion 3 of this Act to reflect such merger, combination, or consolidation.”.

**SEC. 168. TECHNICAL AMENDMENTS.**

(a) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

(b) SECTION 12.—

(1) Section 12(a) of the Federal Home Loan Bank Act (12 U.S.C. 1432(a)) is amended—

(A) by striking “subject to the approval of the Board” immediately following “transaction of its business”; and

(B) by striking “and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,” and inserting “and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws

1 governing the manner in which its affairs may  
2 be administered, consistent with applicable stat-  
3 ute and regulation, as administered by the Fi-  
4 nance Board. No officer, employee, attorney, or  
5 agent of a Federal home loan bank”.

6 (2) Section 12 of the Federal Home Loan Bank  
7 Act (12 U.S.C. 1432) is amended by inserting after  
8 subsection (b) the following new subsection:

9 “(c) PROHIBITION ON EXCESSIVE COMPENSATION.—

10 “(1) IN GENERAL.—The Finance Board shall  
11 prohibit the Federal home loan banks from provid-  
12 ing compensation to any officer, director, or em-  
13 ployee that is not reasonable and comparable with  
14 the compensation for employment in other similar  
15 businesses involving similar duties and responsibil-  
16 ities. However, the Finance Board may not prescribe  
17 or set a specific level or range of compensation for  
18 any officer, director, or employee.

19 “(2) REGULATIONS.—The Finance Board, by  
20 regulation, may provide for the requirements of  
21 paragraph (1) to be phased-in over a period not to  
22 exceed 3 years.

23 “(3) EXCEPTION FOR EXISTING CONTRACTS.—  
24 Paragraph (1) shall not apply to any contract en-  
25 tered into before June 1, 1997.”.

1       (c) POWERS AND DUTIES OF FEDERAL HOUSING FI-  
2       NANCE BOARD.—

3           (1) Subsection (a)(1) of section 2B of the Fed-  
4       eral Home Loan Bank Act (12 U.S.C. 1422b(a)(1))  
5       is amended by striking the period at the end of the  
6       sentence and inserting “; and to have the same pow-  
7       ers, rights, and duties to enforce this Act with re-  
8       spect to the Federal home loan banks and the senior  
9       officers and directors of such banks as the Office of  
10      Federal Housing Enterprise Oversight has over the  
11      Federal housing enterprises and the senior officers  
12      and directors of such enterprises under the Federal  
13      Housing Enterprises Financial Safety and Sound-  
14      ness Act of 1992.”.

15          (2) Subsection (b) of section 2B of the Federal  
16      Home Loan Bank Act (12 U.S.C. 1422b(b)) is  
17      amended—

18           (A) by striking “(1) BOARD STAFF.—”;

19           (B) by striking “function to any employee,  
20      administrative unit” and inserting “function to  
21      any employee or administrative unit”;

22           (C) by striking the second sentence in  
23      paragraph (1); and

24           (D) by striking paragraph (2).

1           (3) Section 111 of Public Law 93–495 (12  
2       U.S.C. 250) is amended by striking “Federal Home  
3       Loan Bank Board” and inserting “Federal Housing  
4       Finance Board”.

5       (d) ELIGIBILITY TO SECURE ADVANCES.—

6           (1) SECTION 9.—Section 9 of the Federal  
7       Home Loan Bank Act (12 U.S.C. 1429) is amend-  
8       ed—

9           (A) in the second sentence, by striking  
10       “with the approval of the Board”; and

11          (B) in the third sentence, by striking “,  
12       subject to the approval of the Board,”.

13       (2) SECTION 10.—

14          (A) Subsection (a) of section 10 of the  
15       Federal Home Loan Bank Act (12 U.S.C.  
16       1430(a)) is amended in paragraph (3), by strik-  
17       ing “Deposits” and inserting “Cash or depos-  
18       its”.

19          (B) Subsection (c) of section 10 of the  
20       Federal Home Loan Bank Act (12 U.S.C.  
21       1430(c)) is amended—

22           (i) in the first sentence by striking  
23       “Board” and inserting “Federal home loan  
24       bank”; and

25           (ii) by striking the second sentence.

1 (C) Subsection (d) of section 10 of the  
2 Federal Home Loan Bank Act (12 U.S.C.  
3 1430(d)) is amended—

4 (i) in the first sentence, by striking  
5 “and the approval of the Board”; and

6 (ii) in the last sentence, by striking  
7 “Subject to the approval of the Board,  
8 any” and inserting “Any”.

9 (D) Section 10(j) of the Federal Home  
10 Loan Bank Act (12 U.S.C. 1430(j)) is amend-  
11 ed—

12 (i) in the first sentence of paragraph  
13 (1) by striking “to subsidize the interest  
14 rate on advances” and inserting “to pro-  
15 vide subsidies, including subsidized interest  
16 rates on advances”;

17 (ii) in paragraphs (2), (3), (4), (5),  
18 (9), (11), and (12) by striking “advances”  
19 and “subsidized advances” each place such  
20 terms appear and inserting “subsidies, in-  
21 cluding subsidized advances”;

22 (iii) in paragraph (1), by inserting  
23 “(A)” before the first sentence, and insert-  
24 ing the following at the end of the para-  
25 graph:

1           “(B) Subject to such regulations as the Fi-  
2           nance Board may prescribe, the board of direc-  
3           tors of each Federal home loan bank may ap-  
4           prove or disapprove requests from members for  
5           Affordable Housing Program subsidies, and  
6           may not delegate such authority.”;

7                       (iv) in paragraph (2), by striking sub-  
8           paragraph (B) and inserting the following  
9           new subparagraph:

10           “(B) finance the purchase, construction or  
11           rehabilitation of rental housing if, for a period  
12           of at least 15 years, either 20 percent or more  
13           of the units in such housing are occupied by  
14           and affordable for households whose income is  
15           50 percent or less of area median income (as  
16           determined by the Secretary of Housing and  
17           Urban Development, and as adjusted for family  
18           size); or 40 percent or more of the units in such  
19           housing are occupied by and affordable for  
20           households whose income is 60 percent or less  
21           of area median income (as determined by the  
22           Secretary of Housing and Urban Development,  
23           and as adjusted for family size).”;

24                       (v) in paragraph (5)—

1 (I) by striking the colon after  
2 “Affordable Housing Program”;

3 (II) by striking subparagraphs  
4 (A) and (B); and

5 (III) by striking “(C) In 1995,  
6 and subsequent years,”;  
7 (vi) in paragraph (11)—

8 (I) by inserting “, pursuant to a  
9 nomination process that is as broad  
10 and as participatory as possible, and  
11 giving consideration to the size of the  
12 District and the diversity of low- and  
13 moderate-income housing needs and  
14 activities within the District,” after  
15 “Advisory Council of 7 to 15 per-  
16 sons”;

17 (II) by inserting “a diverse range  
18 of” before “community and nonprofit  
19 organizations”; and

20 (III) by inserting after the first  
21 sentence, the following new sentence:  
22 “Representatives of no one group  
23 shall constitute an undue proportion  
24 of the membership of the Advisory  
25 Council.”; and



1 (vii) in paragraph (13), by striking  
2 subparagraph (D) and inserting the follow-  
3 ing new subparagraph:

4 “(D) AFFORDABLE.—For purposes of  
5 paragraph (2)(B), the term “affordable” means  
6 that the rent with respect to a unit shall not ex-  
7 ceed 30 percent of the income limitation under  
8 paragraph (2)(B) applicable to occupants of  
9 such unit.”.

10 (e) SECTION 16.—Subsection (a) of section 16 of the  
11 Federal Home Loan Bank Act (12 U.S.C. 1436) is  
12 amended in the third sentence by striking “net earnings”  
13 and inserting “previously retained earnings or current net  
14 earnings”; by striking “, and then only with the approval  
15 of the Federal Housing Finance Board”; and by striking  
16 the fourth sentence.

17 (f) SECTION 18.—Subsection (b) of section 18 of the  
18 Federal Home Loan Bank Act (12 U.S.C. 1438) is  
19 amended by striking paragraph (4).

20 (g) SECTION 11.—Section 11 of the Federal Home  
21 Loan Bank Act (12 U.S.C. 1431) is amended by inserting  
22 after subsection (j) (as so redesignated by section 166(e)  
23 of this subtitle) the following subsection:

24 “(k) PROHIBITION ON OTHER ACTIVITIES.—

1           “(1) A Federal home loan bank may not engage  
2           in any activity other than the activities authorized  
3           under this Act and activities incidental to such au-  
4           thorized activities.

5           “(2) All activities specified in paragraph (1) are  
6           subject to Finance Board approval.”.

7   **SEC. 169. DEFINITIONS.**

8           Paragraph (3) of section 2 of the Federal Home Loan  
9   Bank Act (12 U.S.C. 1422(3)) is amended to read as fol-  
10   lows:

11           “(3) The term “State” in addition to the states  
12           of the United States, includes the District of Colum-  
13           bia, Guam, Puerto Rico, the United States Virgin  
14           Islands, American Samoa, and the Commonwealth of  
15           the Northern Mariana Islands.”.

16   **SEC. 170. RESOLUTION FUNDING CORPORATION.**

17           (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-  
18   eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is  
19   amended to read as follows:

20           “(C) PAYMENTS BY FEDERAL HOME LOAN  
21           BANKS.—To the extent the amounts available  
22           pursuant to subparagraphs (A) and (B) are in-  
23           sufficient to cover the amount of interest pay-  
24           ments, each Federal home loan bank shall pay  
25           to the Funding Corporation each calendar year

1           20.75 percent of the net earnings of such bank  
 2           (after deducting expenses relating to subsection  
 3           (j) of section 10 and operating expenses).”.

4           (b) EFFECTIVE DATE.—The amendment made by  
 5 subsection (a) shall take effect on January 1, 1999.

6 **SEC. 171. CAPITAL STRUCTURE OF THE FEDERAL HOME**  
 7 **LOAN BANKS.**

8           (a) IN GENERAL.—Section 6 of the Federal Home  
 9 Loan Bank Act (12 U.S.C. 1426) is amended to read as  
 10 follows:

11 **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**  
 12 **BANKS.**

13           “(a) CAPITAL STRUCTURE PLAN.—On or before Jan-  
 14 uary 1, 1999, the board of directors of each Federal home  
 15 loan bank shall submit for Finance Board approval a plan  
 16 establishing and implementing a capital structure for such  
 17 bank which—

18           “(1) the board of directors determines is the  
 19 best suited for the condition and operation of the  
 20 bank and the interests of the shareholders of the  
 21 bank;

22           “(2) meets the requirements of subsection (b);  
 23 and

24           “(3) meets the minimum capital standards and  
 25 requirements established under subsection (c) and

1 any regulations prescribed by the Finance Board  
2 pursuant to such subsection.

3 “(b) CONTENTS OF PLAN.—The capital structure  
4 plan of each Federal home loan bank shall meet the follow-  
5 ing requirements:

6 “(1) STOCK PURCHASE REQUIREMENTS.—

7 “(A) IN GENERAL.—Each capital structure  
8 plan of a Federal home loan bank shall require  
9 the shareholders of the bank to maintain an in-  
10 vestment in the stock of the bank in amount  
11 not less than—

12 “(i) a minimum percentage of the  
13 total assets of the shareholder; and

14 “(ii) a minimum percentage of the  
15 outstanding advances from the bank to the  
16 shareholder.

17 “(B) MINIMUM PERCENTAGE LEVELS.—

18 The minimum percentages established pursuant  
19 to subparagraph (A) shall be set at levels suffi-  
20 cient to meet the bank’s minimum capital re-  
21 quirements established by the Finance Board  
22 under subsection (c).

23 “(C) MAXIMUM ASSET BASED CAPITAL RE-  
24 QUIREMENT.—The asset-based capital require-  
25 ment applicable to any shareholder of a Federal

1 home loan bank in any year shall not exceed the  
2 lesser of—

3 “(i) 0.6 percent of a shareholder’s  
4 total assets at the close of the preceding  
5 year; or

6 “(ii) \$300,000,000.

7 “(D) MAXIMUM ADVANCE-BASED REQUIRE-  
8 MENT.—The advance-based capital requirement  
9 applicable to any shareholder of a Federal home  
10 loan bank shall not exceed 6 percent of the  
11 total outstanding advances from the bank to the  
12 shareholder.

13 “(E) MINIMUM STOCK PURCHASE RE-  
14 QUIREMENT AUTHORIZED.—A capital structure  
15 plan may establish a minimum dollar amount of  
16 stock of a Federal home loan bank in which a  
17 shareholder shall be required to invest.

18 “(2) ADJUSTMENTS TO STOCK PURCHASE RE-  
19 QUIREMENTS.—The capital structure plan adopted  
20 by each Federal home loan bank shall impose a con-  
21 tinuing obligation on the board of directors of the  
22 bank to review and adjust as necessary member  
23 stock purchase requirements in order to ensure that  
24 the bank remains in compliance with applicable min-

1       imum capital levels established by the Finance  
2       Board.

3               “(3) TRANSITION RULE FOR STOCK PURCHASE  
4       REQUIREMENTS.—

5               “(A) IN GENERAL.—A capital structure  
6       plan may allow shareholders who were members  
7       of a Federal home loan bank on the date of the  
8       enactment of the Financial Services Act of  
9       1998 to come into compliance with the asset-  
10      based stock purchase requirement established  
11      under paragraph (1) during a transition period  
12      established under the plan of not more than 3  
13      years, if such requirement exceeds the asset-  
14      based stock purchase requirement in effect on  
15      such date of enactment.

16              “(B) INTERIM PURCHASE REQUIRE-  
17      MENTS.—A capital structure plan may establish  
18      interim asset-based stock purchase require-  
19      ments applicable to members referred to in sub-  
20      paragraph (A) during a transition period estab-  
21      lished under subparagraph (A).

22              “(4) CLASSES OF STOCK.—

23              “(A) IN GENERAL.—Each capital structure  
24      plan shall afford each shareholder of a Federal  
25      home loan bank the option of meeting the

1 shareholder's stock purchase requirements  
2 through the purchase of any combination of  
3 Class A or Class B stock.

4 “(B) CLASS A STOCK.—Class A stock shall  
5 be stock of a Federal home loan bank that shall  
6 be redeemed in cash and at par by the bank no  
7 later than 12 months following submission of a  
8 written notice by a shareholder of the share-  
9 holder's intention to divest all shares of stock in  
10 the bank.

11 “(C) CLASS B STOCK.—Class B stock shall  
12 be stock of a Federal home loan bank that shall  
13 be redeemed in cash and at par by the bank no  
14 later than 5 years following submission of a  
15 written notice by a shareholder of the share-  
16 holder's intention to divest all shares of stock in  
17 the bank.

18 “(D) RIGHTS REQUIREMENT.—The Class  
19 B stock of a Federal home loan bank may re-  
20 ceive a dividend premium over that paid on  
21 Class A stock, and may have preferential voting  
22 rights in the election of Federal home loan bank  
23 directors.

24 “(E) LOWER STOCK PURCHASE REQUIRE-  
25 MENTS FOR CLASS B STOCK.—A capital struc-

1           ture plan may provide for lower stock purchase  
2           requirements with respect to those sharehold-  
3           er's that elect to purchase Class B stock in a  
4           manner that is consistent with meeting the  
5           bank's own minimum capital requirements as  
6           established by the Finance Board.

7           “(F) NO OTHER CLASSES OF STOCK PER-  
8           MITTED.—No class of stock other than the  
9           Class A and Class B stock described in sub-  
10          paragraphs (B) and (C) may be issued by a  
11          Federal home loan bank.

12          “(5) LIMITED TRANSFERABILITY OF STOCK.—  
13          Each capital structure plan shall provide that any  
14          equity securities issued by the bank shall be avail-  
15          able only to, held only by, and tradable only among  
16          shareholders of the bank.

17          “(c) CAPITAL STANDARDS.—

18                 “(1) IN GENERAL.—The Finance Board shall  
19                 prescribe, by regulation, uniform capital standards  
20                 applicable to each Federal home loan bank which  
21                 shall include—

22                         “(A) a leverage limit in accordance with  
23                         paragraph (2); and

24                         “(B) a risk-based capital requirement in  
25                         accordance with paragraph (3).



1           “(2) MINIMUM LEVERAGE LIMIT.—The leverage  
2           limit established by the Finance Board shall require  
3           each Federal home loan bank to maintain total cap-  
4           ital in an amount not less than 5 percent of the total  
5           assets of the bank. In determining compliance with  
6           the minimum leverage ratio, the amount of retained  
7           earnings and the paid-in value of Class B stock, if  
8           any, shall be multiplied by 1.5 and such higher  
9           amount shall be deemed to be capital for purposes  
10          of meeting the 5 percent minimum leverage ratio.

11          “(3) RISK-BASED CAPITAL STANDARD.—The  
12          risk-based capital requirement shall be composed of  
13          the following components:

14               “(A) Capital sufficient to meet the credit  
15               risk to which a Federal home loan bank is sub-  
16               ject, based on an amount which is not less than  
17               the amount of tier 1, risk-based capital required  
18               by regulations prescribed, or guidelines issued  
19               under section 38 of the Federal Deposit Insur-  
20               ance Act for a well capitalized insured deposi-  
21               tory institution.

22               “(B) Capital sufficient to meet the interest  
23               rate risk to which a Federal home loan bank is  
24               subject, based on an interest rate stress test ap-  
25               plied by the Finance Board that rigorously tests

1           for changes in interest rates, rate volatility, and  
2           changes in the shape of the yield curve.

3           “(d) REDEMPTION OF CAPITAL.—

4           “(1) IN GENERAL.—Any shareholder of a Fed-  
5           eral home loan bank shall have the right to withdraw  
6           the shareholder’s membership from a Federal home  
7           loan bank and to redeem the shareholder’s stock in  
8           accordance with the redemption rights associated  
9           with the class of stock the shareholder holds, if—

10                   “(A) such shareholder has filed a written  
11           notice of an intention to redeem all such shares;  
12           and

13                   “(B) the shareholder has no outstanding  
14           advances from any Federal home loan bank at  
15           the time of such redemption.

16           “(2) PARTIAL REDEMPTION.—A shareholder  
17           who files notice of intention to redeem all shares of  
18           stock in a Federal home loan bank may redeem not  
19           more than 1/2 of all such shares, in cash and at par,  
20           6 months before the date by which the bank is re-  
21           quired to redeem such stock pursuant to subpara-  
22           graph (B) or (C) of subsection (b)(4).

23           “(3) DIVESTITURE.—The board of directors of  
24           any Federal home loan bank may, after a hearing,

1 order the divestiture by any shareholder of all own-  
2 ership interests of such shareholder in the bank, if—

3 “(A) in the opinion of the board of direc-  
4 tors, such shareholder has failed to comply with  
5 a provision of this Act or any regulation pre-  
6 scribed under this Act; or

7 “(B) the shareholder has been determined  
8 to be insolvent, or otherwise subject to the ap-  
9 pointment of a conservator, receiver, or other  
10 legal custodian, by a State or Federal authority  
11 with regulatory and supervisory responsibility  
12 for such shareholder.

13 “(4) RETIREMENT OF EXCESS STOCK.—Any  
14 shareholder may—

15 “(A) retire shares of Class A stock or, at  
16 the option of the shareholder, shares of Class B  
17 stock, or any combination of Class A and Class  
18 B stock, that are excess to the minimum stock  
19 purchase requirements applicable to the share-  
20 holder; and

21 “(B) receive from the Federal home loan  
22 bank a prompt payment in cash equal to the  
23 par value of such stock.

24 “(5) IMPAIRMENT OF CAPITAL.—If the Finance  
25 Board or the board of directors of a Federal home

1 loan bank determines that the paid-in capital of the  
 2 bank is, or is likely to be, impaired as a result of  
 3 losses in or depreciation of the assets of the bank,  
 4 the Federal home loan bank shall withhold that por-  
 5 tion of the amount due any shareholder with respect  
 6 to any redemption or retirement of any class of  
 7 stock which bears the same ratio to the total of such  
 8 amount as the amount of the impaired capital bears  
 9 to the total amount of capital allocable to such class  
 10 of stock.

11 “(6) POLICIES.—Subject to the requirements of  
 12 this section, the board of directors of each Federal  
 13 home loan bank shall promptly establish policies,  
 14 consistent with this Act, governing the capital stock  
 15 of such bank and other provisions of this section.”.

16 **SEC. 172. INVESTMENTS.**

17 Subsection (j) of section 11 of the Federal Home  
 18 Loan Bank Act (12 U.S.C. 1431) (as so redesignated by  
 19 section 166(e) of this subtitle) is amended to read as fol-  
 20 lows:

21 “(j) INVESTMENTS.—Each bank shall reduce its in-  
 22 vestments to those necessary for liquidity purposes, for  
 23 safe and sound operation of the banks, or for housing fi-  
 24 nance, as administered by the Finance Board.”.

1 **SEC. 173. FEDERAL HOUSING FINANCE BOARD.**

2 Section 2A(b)(1) of the Federal Home Loan Bank  
3 Act (12 U.S.C. 1422(b)(1)) is amended—

4 (1) by redesignating subparagraphs (A) and  
5 (B) as subparagraphs (B) and (C), respectively;

6 (2) by inserting before subparagraph (B) (as so  
7 redesignated by paragraph (1) of this section) the  
8 following new subparagraph:

9 “(A) The Secretary of the Treasury (or the  
10 Secretary of the Treasury’s designee), who shall  
11 serve without additional compensation.”; and

12 (3) in subparagraph (C) (as so redesignated by  
13 paragraph (1) of this section) by striking “Four”  
14 and inserting “3”.

15 **Subtitle H—Direct Activities of**  
16 **Banks**

17 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**  
18 **WRITE CERTAIN MUNICIPAL BONDS.**

19 The paragraph designated the Seventh of section  
20 5136 of the Revised Statutes of the United States (12  
21 U.S.C. 24(7)) is amended by adding at the end the follow-  
22 ing new sentence: “In addition to the provisions in this  
23 paragraph for dealing in, underwriting or purchasing secu-  
24 rities, the limitations and restrictions contained in this  
25 paragraph as to dealing in, underwriting, and purchasing  
26 investment securities for the national bank’s own account

1 shall not apply to obligations (including limited obligation  
 2 bonds, revenue bonds, and obligations that satisfy the re-  
 3 quirements of section 142(b)(1) of the Internal Revenue  
 4 Code of 1986) issued by or on behalf of any state or politi-  
 5 cal subdivision of a state, including any municipal cor-  
 6 porate instrumentality of 1 or more states, or any public  
 7 agency or authority of any state or political subdivision  
 8 of a state, if the national banking association is well cap-  
 9 italized (as defined in section 38 of the Federal Deposit  
 10 Insurance Act).”.

## 11           **Subtitle I—Deposit Insurance** 12                                   **Funds**

### 13 **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

14           (a) STUDY REQUIRED.—The Board of Directors of  
 15 the Federal Deposit Insurance Corporation shall conduct  
 16 a study of the following issues with regard to the Bank  
 17 Insurance Fund and the Savings Association Insurance  
 18 Fund:

19                   (1) The safety and soundness of the funds and  
 20                   the adequacy of the reserve requirements applicable  
 21                   to the funds in light of—

22                                   (A) the size of the insured depository insti-  
 23                                   tutions which are resulting from mergers and  
 24                                   consolidations since the effective date of the

1 Riegle-Neal Interstate Banking and Branching  
2 Efficiency Act of 1994; and

3 (B) the affiliation of insured depository in-  
4 stitutions with other financial institutions pur-  
5 suant to this Act and the amendments made by  
6 this Act.

7 (2) The concentration levels of the funds, tak-  
8 ing into account the number of members of each  
9 fund and the geographic distribution of such mem-  
10 bers, and the extent to which either fund is exposed  
11 to higher risks due to a regional concentration of  
12 members or an insufficient membership base relative  
13 to the size of member institutions.

14 (3) Issues relating to the planned merger of the  
15 funds, including the cost of merging the funds and  
16 the manner in which such costs will be distributed  
17 among the members of the respective funds.

18 (b) REPORT REQUIRED.—

19 (1) IN GENERAL.—Before the end of the 9-  
20 month period beginning on the date of the enact-  
21 ment of this Act, the Board of Directors of the Fed-  
22 eral Deposit Insurance Corporation shall submit a  
23 report to the Congress on the study conducted pur-  
24 suant to subsection (a).

1           (2) CONTENTS OF REPORT.—The report shall  
2     include—

3           (A) detailed findings of the Board of Di-  
4     rectors with regard to the issues described in  
5     subsection (a);

6           (B) a description of the plans developed by  
7     the Board of Directors for merging the Bank  
8     Insurance Fund and the Savings Association  
9     Insurance Fund, including an estimate of the  
10    amount of the cost of such merger which would  
11    be borne by Savings Association Insurance  
12    Fund members; and

13          (C) such recommendations for legislative  
14    and administrative action as the Board of Di-  
15    rectors determines to be necessary or appro-  
16    priate to preserve the safety and soundness of  
17    the deposit insurance funds, reduce the risks to  
18    such funds, provide for an efficient merger of  
19    such funds, and for other purposes.

20          (c) DEFINITIONS.—For purposes of this section, the  
21    following definitions shall apply:

22          (1) INSURED DEPOSITORY INSTITUTION.—The  
23    term “insured depository institution” has the mean-  
24    ing given to such term in section 3(c) of the Federal  
25    Deposit Insurance Act.



1           (2) BIF AND SAIF MEMBERS.—The terms  
 2           “Bank Insurance Fund member” and “Savings As-  
 3           sociation Insurance Fund member” have the mean-  
 4           ing given to such terms in section 7(l) of the Federal  
 5           Deposit Insurance Act.

## 6       **Subtitle J—Effective Date of Title**

### 7       **SEC. 191. EFFECTIVE DATE.**

8           Except with regard to any subtitle or other provision  
 9           of this title for which a specific effective date is provided,  
 10          this title and the amendments made by this title shall take  
 11          effect at the end of the 270-day period beginning on the  
 12          date of the enactment of this Act.

## 13       **TITLE II—FUNCTIONAL** 14       **REGULATION**

## 15       **Subtitle A—Brokers and Dealers**

### 16       **SEC. 201. DEFINITION OF BROKER.**

17          Section 3(a)(4) of the Securities Exchange Act of  
 18          1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

19               “(4) BROKER.—

20                   “(A) IN GENERAL.—The term ‘broker’  
 21                   means any person engaged in the business of  
 22                   effecting transactions in securities for the ac-  
 23                   count of others.

24                   “(B) EXCEPTION FOR CERTAIN BANK AC-  
 25                   TIVITIES.—A bank shall not be considered to be

1 a broker because the bank engages in any of  
2 the following activities under the conditions de-  
3 scribed:

4 “(i) THIRD PARTY BROKERAGE AR-  
5 RANGEMENTS.—The bank enters into a  
6 contractual or other arrangement with a  
7 broker or dealer registered under this title  
8 under which the broker or dealer offers  
9 brokerage services on or off the premises  
10 of the bank if—

11 “(I) such broker or dealer is  
12 clearly identified as the person per-  
13 forming the brokerage services;

14 “(II) the broker or dealer per-  
15 forms brokerage services in an area  
16 that is clearly marked and, to the ex-  
17 tent practicable, physically separate  
18 from the routine deposit-taking activi-  
19 ties of the bank;

20 “(III) any materials used by the  
21 bank to advertise or promote generally  
22 the availability of brokerage services  
23 under the contractual or other ar-  
24 rangement clearly indicate that the  
25 brokerage services are being provided

1 by the broker or dealer and not by the  
2 bank;

3 “(IV) any materials used by the  
4 bank to advertise or promote generally  
5 the availability of brokerage services  
6 under the contractual or other ar-  
7 rangement are in compliance with the  
8 Federal securities laws before dis-  
9 tribution;

10 “(V) bank employees (other than  
11 associated persons of a broker or deal-  
12 er who are qualified pursuant to the  
13 rules of a self-regulatory organization)  
14 perform only clerical or ministerial  
15 functions in connection with broker-  
16 age transactions including scheduling  
17 appointments with the associated per-  
18 sons of a broker or dealer, except that  
19 bank employees may forward cus-  
20 tomer funds or securities and may de-  
21 scribe in general terms the range of  
22 investment vehicles available from the  
23 bank and the broker or dealer under  
24 the contractual or other arrangement;

1           “(VI) bank employees do not di-  
2 rectly receive incentive compensation  
3 for any brokerage transaction unless  
4 such employees are associated persons  
5 of a broker or dealer and are qualified  
6 pursuant to the rules of a self-regu-  
7 latory organization, except that the  
8 bank employees may receive com-  
9 pensation for the referral of any cus-  
10 tomer if the compensation is a nomi-  
11 nal one-time cash fee of a fixed dollar  
12 amount and the payment of the fee is  
13 not contingent on whether the referral  
14 results in a transaction;

15           “(VII) such services are provided  
16 by the broker or dealer on a basis in  
17 which all customers which receive any  
18 services are fully disclosed to the  
19 broker or dealer;

20           “(VIII) the bank does not carry  
21 a securities account of the customer  
22 except in a customary custodian or  
23 trustee capacity; and

24           “(IX) the bank, broker, or dealer  
25 informs each customer that the bro-

1           kerage services are provided by the  
2           broker or dealer and not by the bank  
3           and that the securities are not depos-  
4           its or other obligations of the bank,  
5           are not guaranteed by the bank, and  
6           are not insured by the Federal De-  
7           posit Insurance Corporation.

8           “(ii) TRUST ACTIVITIES.—The bank  
9           effects transactions in a trustee capacity,  
10          or effects transactions in a fiduciary capac-  
11          ity in its trust department or other depart-  
12          ment that is regularly examined by bank  
13          examiners for compliance with fiduciary  
14          principles and standards, and (in either  
15          case)—

16               “(I) is primarily compensated on  
17               the basis of an administration or an-  
18               nual fee (payable on a monthly, quar-  
19               terly, or other basis), a percentage of  
20               assets under management, or a flat or  
21               capped per order processing fee, or  
22               any combination of such fees, but  
23               does not otherwise receive brokerage  
24               commissions, or other similar remu-  
25               neration based on effecting trans-

1 actions in securities, that exceed the  
2 cost incurred by the bank in connec-  
3 tion with executing securities trans-  
4 actions for trustee or fiduciary cus-  
5 tomers; and

6 “(II) does not publicly solicit bro-  
7 kerage business, other than by adver-  
8 tising that it effects transactions in  
9 securities in conjunction with advertis-  
10 ing its other trust activities.

11 “(iii) PERMISSIBLE SECURITIES  
12 TRANSACTIONS.—The bank effects trans-  
13 actions in—

14 “(I) commercial paper, bankers  
15 acceptances, or commercial bills;

16 “(II) exempted securities;

17 “(III) qualified Canadian govern-  
18 ment obligations as defined in section  
19 5136 of the Revised Statutes, in con-  
20 formity with section 15C of this title  
21 and the rules and regulations there-  
22 under, or obligations of the North  
23 American Development Bank; or

24 “(IV) any standardized, credit  
25 enhanced debt security issued by a

1 foreign government pursuant to the  
2 March 1989 plan of then Secretary of  
3 the Treasury Brady, used by such for-  
4 eign government to retire outstanding  
5 commercial bank loans.

6 “(iv) CERTAIN STOCK PURCHASE  
7 PLANS.—

8 “(I) EMPLOYEE BENEFIT  
9 PLANS.—The bank effects trans-  
10 actions, as part of its transfer agency  
11 activities, in the securities of an issuer  
12 as part of any pension, retirement,  
13 profit-sharing, bonus, thrift, savings,  
14 incentive, or other similar benefit plan  
15 for the employees of that issuer or its  
16 subsidiaries, if—

17 (aa) the bank does not so-  
18 licit transactions or provide in-  
19 vestment advice with respect to  
20 the purchase or sale of securities  
21 in connection with the plan; and

22 “(bb) the bank’s compensa-  
23 tion for such plan or program  
24 consists of administration fees, or  
25 flat or capped per order process-

1 ing fees, or both, but the bank  
2 does not otherwise receive broker-  
3 age commissions, or other similar  
4 remuneration based on effecting  
5 transactions in securities, that  
6 exceed the cost incurred by the  
7 bank in connection with execut-  
8 ing securities transactions under  
9 this subclause (I).

10 “(II) DIVIDEND REINVESTMENT  
11 PLANS.—The bank effects trans-  
12 actions, as part of its transfer agency  
13 activities, in the securities of an issuer  
14 as part of that issuer’s dividend rein-  
15 vestment plan, if—

16 “(aa) the bank does not so-  
17 licit transactions or provide in-  
18 vestment advice with respect to  
19 the purchase or sale of securities  
20 in connection with the plan;

21 “(bb) the bank does not net  
22 shareholders’ buy and sell orders,  
23 other than for programs for odd-  
24 lot holders or plans registered  
25 with the Commission; and



1           “(cc) the bank’s compensa-  
2           tion for such plan or program  
3           consists of administration fees, or  
4           flat or capped per order process-  
5           ing fees, or both, but the bank  
6           does not otherwise receive broker-  
7           age commissions, or other similar  
8           remuneration based on effecting  
9           transactions in securities, that  
10          exceed the cost incurred by the  
11          bank in connection with execut-  
12          ing securities transactions under  
13          this subclause (II).

14          “(III) ISSUER PLANS.—The bank  
15          effects transactions, as part of its  
16          transfer agency activities, in the secu-  
17          rities of an issuer as part of a plan or  
18          program for the purchase or sale of  
19          that issuer’s shares, if—

20               “(aa) the bank does not so-  
21               licit transactions or provide in-  
22               vestment advice with respect to  
23               the purchase or sale of securities  
24               in connection with the plan or  
25               program;

1           “(bb) the bank does not net  
2           shareholders’ buy and sell orders,  
3           other than for programs for odd-  
4           lot holders or plans registered  
5           with the Commission; and

6           “(cc) the bank’s compensa-  
7           tion for such plan or program  
8           consists of administration fees, or  
9           flat or capped per order process-  
10          ing fees, or both, but the bank  
11          does not otherwise receive broker-  
12          age commissions, or other similar  
13          remuneration based on effecting  
14          transactions in securities, that  
15          exceed the cost incurred by the  
16          bank in connection with execut-  
17          ing securities transactions under  
18          this subclause (III).

19          “(IV) PERMISSIBLE DELIVERY  
20          OF MATERIALS.—The exception to  
21          being considered a broker for a bank  
22          engaged in activities described in sub-  
23          clauses (I), (II), and (III) will not be  
24          affected by a bank’s delivery of writ-  
25          ten or electronic plan materials to em-

1            ployees of the issuer, shareholders of  
2            the issuer, or members of affinity  
3            groups of the issuer, so long as such  
4            materials are—

5                    “(aa) comparable in scope or  
6                    nature to that permitted by the  
7                    Commission as of the date of the  
8                    enactment of the Financial Serv-  
9                    ices Act of 1998; or

10                   “(bb) otherwise permitted by  
11                   the Commission.

12                   “(v) SWEEP ACCOUNTS.—The bank  
13                   effects transactions as part of a program  
14                   for the investment or reinvestment of bank  
15                   deposit funds into any no-load, open-end  
16                   management investment company reg-  
17                   istered under the Investment Company Act  
18                   of 1940 that holds itself out as a money  
19                   market fund.

20                   “(vi) AFFILIATE TRANSACTIONS.—  
21                   The bank effects transactions for the ac-  
22                   count of any affiliate of the bank (as de-  
23                   fined in section 2 of the Bank Holding  
24                   Company Act of 1956) other than—

1 “(I) a registered broker or deal-  
2 er; or

3 “(II) an affiliate that is engaged  
4 in merchant banking, as described in  
5 section 6(c)(3)(H) of the Bank Hold-  
6 ing company Act of 1956.

7 “(vii) PRIVATE SECURITIES OFFER-  
8 INGS.—The bank—

9 “(I) effects sales as part of a pri-  
10 mary offering of securities not involv-  
11 ing a public offering, pursuant to sec-  
12 tion 3(b), 4(2), or 4(6) of the Securi-  
13 ties Act of 1933 or the rules and reg-  
14 ulations issued thereunder;

15 “(II) at any time after one year  
16 after the date of enactment of the Fi-  
17 nancial Services Act of 1998, is not  
18 affiliated with a broker or dealer that  
19 has been registered for more than one  
20 year; and

21 “(III) effects transactions exclu-  
22 sively with qualified investors.

23 “(viii) SAFEKEEPING AND CUSTODY  
24 ACTIVITIES.—

1 “(I) IN GENERAL.—The bank, as  
2 part of customary banking activities—

3 “(aa) provides safekeeping  
4 or custody services with respect  
5 to securities, including the exer-  
6 cise of warrants and other rights  
7 on behalf of customers;

8 “(bb) facilitates the transfer  
9 of funds or securities, as a custo-  
10 dian or a clearing agency, in con-  
11 nection with the clearance and  
12 settlement of its customers’  
13 transactions in securities;

14 “(cc) effects securities lend-  
15 ing or borrowing transactions  
16 with or on behalf of customers as  
17 part of services provided to cus-  
18 tomers pursuant to division (aa)  
19 or (bb) or invests cash collateral  
20 pledged in connection with such  
21 transactions; or

22 “(dd) holds securities  
23 pledged by a customer to another  
24 person or securities subject to  
25 purchase or resale agreements in-

1           volving a customer, or facilitates  
2           the pledging or transfer of such  
3           securities by book entry or as  
4           otherwise provided under applica-  
5           ble law.

6           “(II) EXCEPTION FOR CARRYING  
7           BROKER ACTIVITIES.—The exception  
8           to being considered a broker for a  
9           bank engaged in activities described in  
10          subclause (I) shall not apply if the  
11          bank, in connection with such activi-  
12          ties, acts in the United States as a  
13          carrying broker (as such term, and  
14          different formulations thereof, are  
15          used in section 15(c)(3) and the rules  
16          and regulations thereunder) for any  
17          broker or dealer, unless such carrying  
18          broker activities are engaged in with  
19          respect to government securities (as  
20          defined in paragraph (42) of this sub-  
21          section).

22          “(ix) BANKING PRODUCTS.—The bank  
23          effects transactions in traditional banking  
24          products, as defined in section 206(a) of  
25          the Financial Services Act of 1998.

1                   “(x) DE MINIMIS EXCEPTION.—The  
2                   bank effects, other than in transactions re-  
3                   ferred to in clauses (i) through (ix), not  
4                   more than 500 transactions in securities in  
5                   any calendar year, and such transactions  
6                   are not effected by an employee of the  
7                   bank who is also an employee of a broker  
8                   or dealer.

9                   “(C) BROKER DEALER EXECUTION.—The  
10                  exception to being considered a broker for a  
11                  bank engaged in activities described in clauses  
12                  (ii), (iv), and (viii) of subparagraph (B) shall  
13                  not apply if the activities described in such pro-  
14                  visions result in the trade in the United States  
15                  of any security that is a publicly traded security  
16                  in the United States, unless—

17                  “(i) the bank directs such trade to a  
18                  registered or broker dealer for execution;

19                  “(ii) the trade is a cross trade or  
20                  other substantially similar trade of a secu-  
21                  rity that—

22                  “(I) is made by the bank or be-  
23                  tween the bank and an affiliated fidu-  
24                  ciary; and

1                   “(II) is not in contravention of  
2                   fiduciary principles established under  
3                   applicable Federal or State law; or

4                   “(iii) the trade is conducted in some  
5                   other manner permitted under rules, regu-  
6                   lations, or orders as the Commission may  
7                   prescribe or issue.

8                   “(D) NO EFFECT OF BANK EXEMPTIONS  
9                   ON OTHER COMMISSION AUTHORITY.—The ex-  
10                  ception to being considered a broker for a bank  
11                  engaged in activities described in subpara-  
12                  graphs (B) and (C) shall not affect the commis-  
13                  sion’s authority under any other provision of  
14                  this Act or any other securities law.

15                  “(E) FIDUCIARY CAPACITY.—For purposes  
16                  of subparagraph (B)(ii), the term ‘fiduciary ca-  
17                  pacity’ means—

18                         “(i) in the capacity as trustee, execu-  
19                         tor, administrator, registrar of stocks and  
20                         bonds, transfer agent, guardian, assignee,  
21                         receiver, or custodian under a uniform gift  
22                         to minor act, or as an investment adviser  
23                         if the bank receives a fee for its investment  
24                         advice;



1 “(ii) in any capacity in which the  
 2 bank possesses investment discretion on  
 3 behalf of another; or

4 “(iii) in any other similar capacity.

5 “(F) EXCEPTION FOR ENTITIES SUBJECT  
 6 TO SECTION 15(e).—The term ‘broker’ does not  
 7 include a bank that—

8 “(i) was, immediately prior to the en-  
 9 actment of the Financial Services Act of  
 10 1998, subject to section 15(e); and

11 “(ii) is subject to such restrictions  
 12 and requirements as the Commission con-  
 13 siders appropriate.”.

14 **SEC. 202. DEFINITION OF DEALER.**

15 Section 3(a)(5) of the Securities Exchange Act of  
 16 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

17 “(5) DEALER.—

18 “(A) IN GENERAL.—The term ‘dealer’  
 19 means any person engaged in the business of  
 20 buying and selling securities for such person’s  
 21 own account through a broker or otherwise.

22 “(B) EXCEPTION FOR PERSON NOT EN-  
 23 GAGED IN THE BUSINESS OF DEALING.—The  
 24 term ‘dealer’ does not include a person that  
 25 buys or sells securities for such person’s own

1 account, either individually or in a fiduciary ca-  
2 pacity, but not as a part of a regular business.

3 “(C) EXCEPTION FOR CERTAIN BANK AC-  
4 TIVITIES.—A bank shall not be considered to be  
5 a dealer because the bank engages in any of the  
6 following activities under the conditions de-  
7 scribed:

8 “(i) PERMISSIBLE SECURITIES TRANS-  
9 ACTIONS.—The bank buys or sells—

10 “(I) commercial paper, bankers  
11 acceptances, or commercial bills;

12 “(II) exempted securities;

13 “(III) qualified Canadian govern-  
14 ment obligations as defined in section  
15 5136 of the Revised Statutes of the  
16 United States, in conformity with sec-  
17 tion 15C of this title and the rules  
18 and regulations thereunder, or obliga-  
19 tions of the North American Develop-  
20 ment Bank; or

21 “(IV) any standardized, credit  
22 enhanced debt security issued by a  
23 foreign government pursuant to the  
24 March 1989 plan of then Secretary of  
25 the Treasury Brady, used by such for-

1                   eign government to retire outstanding  
2                   commercial bank loans.

3                   “(ii) INVESTMENT, TRUSTEE, AND FI-  
4                   DUCIARY TRANSACTIONS.—The bank buys  
5                   or sells securities for investment pur-  
6                   poses—

7                   “(I) for the bank; or

8                   “(II) for accounts for which the  
9                   bank acts as a trustee or fiduciary.

10                  “(iii)       ASSET-BACKED       TRANS-  
11                  ACTIONS.—The bank engages in the  
12                  issuance or sale to qualified investors,  
13                  through a grantor trust or otherwise, of se-  
14                  curities backed by or representing an inter-  
15                  est in notes, drafts, acceptances, loans,  
16                  leases, receivables, other obligations, or  
17                  pools of any such obligations predomi-  
18                  nantly originated by the bank, or a syn-  
19                  dicate of banks of which the bank is a  
20                  member, or an affiliate of any such bank  
21                  other than a broker or dealer.

22                  “(iv) BANKING PRODUCTS.—The bank  
23                  buys or sells traditional banking products,  
24                  as defined in section 206(a) of the Finan-  
25                  cial Services Act of 1998.

1                   “(v) DERIVATIVE INSTRUMENTS.—

2                   The bank issues, buys, or sells any deriva-  
3                   tive instrument to which the bank is a  
4                   party—

5                               “(I) to or from a corporation,  
6                               limited liability company, or partner-  
7                               ship that owns and invests on a dis-  
8                               cretionary basis, not less than  
9                               \$10,000,000 in investments, or to or  
10                              from a qualified investor, except that  
11                              if the instrument provides for the de-  
12                              livery of one or more securities (other  
13                              than a derivative instrument or gov-  
14                              ernment security), the transaction  
15                              shall be effected with or through a  
16                              registered broker or dealer; or

17                              “(II) to or from other persons,  
18                              except that if the derivative instru-  
19                              ment provides for the delivery of one  
20                              or more securities (other than a deriv-  
21                              ative instrument or government secu-  
22                              rity), or is a security (other than a  
23                              government security), the transaction  
24                              shall be effected with or through a  
25                              registered broker or dealer; or

1 “(III) to or from any person if  
 2 the instrument is neither a security  
 3 nor provides for the delivery of one or  
 4 more securities (other than a deriva-  
 5 tive instrument).”.

6 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**  
 7 **TIES OFFERINGS.**

8 Section 15A of the Securities Exchange Act of 1934  
 9 (15 U.S.C. 78o–3) is amended by inserting after sub-  
 10 section (i) the following new subsection:

11 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-  
 12 TIES OFFERINGS.—A registered securities association  
 13 shall create a limited qualification category for any associ-  
 14 ated person of a member who effects sales as part of a  
 15 primary offering of securities not involving a public offer-  
 16 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-  
 17 ties Act of 1933 and the rules and regulations thereunder,  
 18 and shall deem qualified in such limited qualification cat-  
 19 egory, without testing, any bank employee who, in the six  
 20 month period preceding the date of enactment of this Act,  
 21 engaged in effecting such sales.”.

1 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**  
2 **DURES.**

3 Section 18 of the Federal Deposit Insurance Act is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(s) SALES PRACTICES AND COMPLAINT PROCE-  
7 DURES WITH RESPECT TO BANK SECURITIES ACTIVI-  
8 TIES.—

9 “(1) REGULATIONS REQUIRED.—Each Federal  
10 banking agency shall prescribe and publish in final  
11 form, not later than 6 months after the date of en-  
12 actment of the Financial Services Act of 1998, regu-  
13 lations which apply to retail transactions, solicita-  
14 tions, advertising, or offers of any security by any  
15 insured depository institution or any affiliate thereof  
16 other than a registered broker or dealer or an indi-  
17 vidual acting on behalf of such a broker or dealer  
18 who is an associated person of such broker or dealer.  
19 Such regulations shall include—

20 “(A) requirements that sales practices  
21 comply with just and equitable principles of  
22 trade that are substantially similar to the Rules  
23 of Fair Practice of the National Association of  
24 Securities Dealers; and

25 “(B) requirements prohibiting (i) condi-  
26 tioning an extension of credit on the purchase

1           or sale of a security; and (ii) any conduct lead-  
2           ing a customer to believe that an extension of  
3           credit is conditioned upon the purchase or sale  
4           of a security.

5           “(2) PROCEDURES REQUIRED.—The appro-  
6           priate Federal banking agencies shall jointly estab-  
7           lish procedures and facilities for receiving and expe-  
8           ditiously processing complaints against any bank or  
9           employee of a bank arising in connection with the  
10          purchase or sale of a security by a customer, includ-  
11          ing a complaint alleging a violation of the regula-  
12          tions prescribed under paragraph (1), but excluding  
13          a complaint involving an individual acting on behalf  
14          of such a broker or dealer who is an associated per-  
15          son of such broker or dealer. The use of any such  
16          procedures and facilities by such a customer shall be  
17          at the election of the customer. Such procedures  
18          shall include provisions to refer a complaint alleging  
19          fraud to the Securities and Exchange Commission  
20          and appropriate State securities commissions.

21          “(3) REQUIRED ACTIONS.—The actions re-  
22          quired by the Federal banking agencies under para-  
23          graph (2) shall include the following:

1           “(A) establishing a group, unit, or bureau  
2           within each such agency to receive such com-  
3           plaints;

4           “(B) developing and establishing proce-  
5           dures for investigating, and permitting cus-  
6           tomers to investigate, such complaints;

7           “(C) developing and establishing proce-  
8           dures for informing customers of the rights  
9           they may have in connection with such com-  
10          plaints;

11          “(D) developing and establishing proce-  
12          dures that allow customers a period of at least  
13          6 years to make complaints and that do not re-  
14          quire customers to pay the costs of the proceed-  
15          ing; and

16          “(E) developing and establishing proce-  
17          dures for resolving such complaints, including  
18          procedures for the recovery of losses to the ex-  
19          tent appropriate.

20          “(4) CONSULTATION AND JOINT REGULA-  
21          TIONS.—The Federal banking agencies shall consult  
22          with each other and prescribe joint regulations pur-  
23          suant to paragraphs (1) and (2), after consultation  
24          with the Securities and Exchange Commission.



1           “(5) PROCEDURES IN ADDITION TO OTHER  
2       REMEDIES.—The procedures and remedies provided  
3       under this subsection shall be in addition to, and not  
4       in lieu of, any other remedies available under law.

5           “(6) DEFINITION.—As used in this sub-  
6       section—

7                   “(A) the term ‘security’ has the meaning  
8               provided in section 3(a)(10) of the Securities  
9               Exchange Act of 1934;

10                   “(B) the term ‘registered broker or dealer’  
11               has the meaning provided in section 3(a)(48) of  
12               such Act; and

13                   “(C) the term ‘associated person’ has the  
14               meaning provided in section 3(a)(18) of such  
15               Act.”.

16 **SEC. 205. INFORMATION SHARING.**

17       Section 18 of the Federal Deposit Insurance Act is  
18       amended by adding at the end the following new sub-  
19       section:

20           “(t) RECORDKEEPING REQUIREMENTS.—

21                   “(1) REQUIREMENTS.—Each appropriate Fed-  
22               eral banking agency, after consultation with and  
23               consideration of the views of the Commission, shall  
24               establish recordkeeping requirements for banks rely-  
25               ing on exceptions contained in paragraphs (4) and

(5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

“(2) DEFINITIONS.—As used in this subsection the term ‘Commission’ means the Securities and Exchange Commission.”.

**SEC. 206. DEFINITION AND TREATMENT OF BANKING PRODUCTS.**

(a) DEFINITION OF TRADITIONAL BANKING PRODUCT.—

(1) IN GENERAL.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term ‘traditional banking product’ means—

(A) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(B) a banker’s acceptance;

(C) a letter of credit issued or loan made by a bank;

1 (D) a debit account at a bank arising from  
2 a credit card or similar arrangement;

3 (E) a participation in a loan which the  
4 bank or an affiliate of the bank (other than a  
5 broker or dealer) funds, participates in, or owns  
6 that is sold—

7 (i) to qualified investors; or

8 (ii) to other persons that—

9 “(I) have the opportunity to re-  
10 view and assess any material informa-  
11 tion, including information regarding  
12 the borrower’s creditworthiness; and

13 “(II) based on such factors as fi-  
14 nancial sophistication, net worth, and  
15 knowledge and experience in financial  
16 matters, have the capability to evalu-  
17 ate the information available, as de-  
18 termined under generally applicable  
19 banking standards or guidelines; or

20 (F) any derivative instrument, whether or  
21 not individually negotiated, involving or relating  
22 to—

23 (i) foreign currencies, except options  
24 on foreign currencies that trade on a na-  
25 tional securities exchange;

1                   (ii) interest rates, except interest rate  
2                   derivative instruments: (I) that are based  
3                   on a security or a group or index of securi-  
4                   ties (other than government securities or a  
5                   group or index of government securities);  
6                   (II) that provide for the delivery of one or  
7                   more securities (other than government se-  
8                   curities); or (III) that trade on a national  
9                   securities exchange; or

10                  (iii) commodities, other rates, indices,  
11                  or other assets, except derivative instru-  
12                  ments: (I) that are securities or that are  
13                  based on a group or index of securities  
14                  (other than government securities or a  
15                  group or index of government securities);  
16                  (II) that provide for the delivery of one or  
17                  more securities (other than government se-  
18                  curities); or (III) that trade on a national  
19                  securities exchange.

20                  (2) CLASSIFICATION LIMITED.—Classification  
21                  of a particular product as a traditional banking  
22                  product pursuant to this subsection shall not be con-  
23                  strued as finding or implying that such product is  
24                  or is not a security for any purpose under the secu-  
25                  rities laws, or is or is not an account, agreement,

1 contract, or transaction for any purpose under the  
2 Commodity Exchange Act.

3 (3) DEFINITIONS.—For purposes of this sub-  
4 section—

5 (A) the term “bank” has the meaning pro-  
6 vided in section 3(a)(6) of the Securities Ex-  
7 change Act of 1934 (15 U.S.C. 78c(a)(6);

8 (B) the term “qualified investor” has the  
9 meaning provided in section 3(a)(55) of such  
10 Act;

11 (C) the term “government securities” has  
12 the meaning provided in section 3(a)(42) of  
13 such Act, and, for purposes of this subsection,  
14 commercial paper, bankers acceptances, and  
15 commercial bills shall be treated in the same  
16 manner as government securities; and

17 (D) the term “Federal banking agency”  
18 has the meaning provided in section 3(z) of the  
19 Federal Deposit Insurance Act (12 U.S.C.  
20 1813(z)).

21 (b) TREATMENT OF NEW BANKING PRODUCTS FOR  
22 PURPOSES OF BROKER/DEALER REQUIREMENTS.—Sec-  
23 tion 15 of the Securities Exchange Act of 1934 (15 U.S.C.  
24 78o) is amended by adding at the end the following new  
25 subsection:

1       “(i) RULEMAKING TO EXTEND REQUIREMENTS TO  
2 NEW BANKING PRODUCTS.—

3               “(1) LIMITATION.—The Commission shall  
4 not—

5                       “(A) require a bank to register as a broker  
6 or dealer under this section because the bank  
7 engages in any transaction in, or buys or sells,  
8 a new banking product; or

9                       “(B) bring an action against a bank for a  
10 failure to comply with a requirement described  
11 in subparagraph (A);

12 unless the Commission has imposed such require-  
13 ment by rule or regulation issued in accordance with  
14 this section.

15               “(2) CRITERIA FOR RULEMAKING.—The Com-  
16 mission shall not impose a requirement under para-  
17 graph (1) of this subsection with respect to any new  
18 banking product unless the Commission determines  
19 that—

20                       “(A) the new banking product is a secu-  
21 rity; and

22                       “(B) imposing such requirement is nec-  
23 essary or appropriate in the public interest and  
24 for the protection of investors, consistent with  
25 the requirements of section 3(f).

1           “(3) NEW BANKING PRODUCT.—For purposes  
2           of this subsection, the term ‘new banking product’  
3           means a product that—

4                   “(A) was not subjected to regulation by  
5           the Commission as a security prior to the date  
6           of enactment of this subsection; and

7                   “(B) is not a traditional banking product,  
8           as such term is defined in section 206(a) of the  
9           Financial Services Act of 1998.

10           “(4) CONSULTATION.—In promulgating rules  
11           under this subsection, the Commission shall consult  
12           with and consider the views of the appropriate regu-  
13           latory agencies concerning the proposed rule and the  
14           impact on the banking industry.”.

15 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**  
16 **VESTOR DEFINED.**

17           Section 3(a) of the Securities Exchange Act of 1934  
18           is amended by adding at the end the following new para-  
19           graphs:

20           “(54) DERIVATIVE INSTRUMENT.—

21                   “(A) DEFINITION.—The term ‘derivative  
22           instrument’ means any individually negotiated  
23           contract, agreement, warrant, note, or option  
24           that is based, in whole or in part, on the value  
25           of, any interest in, or any quantitative measure

1 or the occurrence of any event relating to, one  
2 or more commodities, securities, currencies, in-  
3 terest or other rates, indices, or other assets,  
4 but does not include a traditional banking prod-  
5 uct, as defined in section 206(a) of the Finan-  
6 cial Services Act of 1998.

7 “(B) CLASSIFICATION LIMITED.— Classi-  
8 fication of a particular contract as a derivative  
9 instrument pursuant to this paragraph shall not  
10 be construed as finding or implying that such  
11 instrument is or is not a security for any pur-  
12 pose under the securities laws, or is or is not  
13 an account, agreement, contract, or transaction  
14 for any purpose under the Commodity Ex-  
15 change Act.

16 “(55) QUALIFIED INVESTOR.—

17 “(A) DEFINITION.—For purposes of this  
18 title and section 206(a)(1)(E) of the Financial  
19 Services Act of 1998, the term ‘qualified inves-  
20 tor’ means—

21 “(i) any investment company reg-  
22 istered with the Commission under section  
23 8 of the Investment Company Act of 1940;

24 “(ii) any issuer eligible for an exclu-  
25 sion from the definition of investment com-



pany pursuant to section 3(c)(7) of the Investment Company Act of 1940;

“(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

“(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

“(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank,

savings and loan association, insurance company, or registered investment adviser;

“(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

“(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

“(viii) any associated person of a broker or dealer other than a natural person;

“(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978); or

“(x) the government of any foreign country.

“(B) ADDITIONAL QUALIFICATIONS DEFINED.—For purposes of paragraphs (4)(B)(vii) and (5)(C)(iii) of this subsection, and section 206(a)(1)(E) of the Financial Services Act of 1998, the term ‘qualified investor’ also means—

“(i) any corporation, company, or partnership that owns and invests on a dis-

cretionary basis, not less than \$10,000,000  
in investments;

“(ii) any natural person who owns  
and invests on a discretionary basis, not  
less than \$10,000,000 in investments;

“(iii) any government or political sub-  
division, agency, or instrumentality of a  
government who owns and invests on a dis-  
cretionary basis not less than \$50,000,000  
in investments; or

“(iv) any multinational or supra-  
national entity or any agency or instru-  
mentality thereof.

“(C) ADDITIONAL AUTHORITY.—The Com-  
mission may, by rule or order, define a ‘quali-  
fied investor’ as any other person, other than a  
natural person, taking into consideration such  
factors as the person’s financial sophistication,  
net worth, and knowledge and experience in fi-  
nancial matters.”.

**SEC. 208. GOVERNMENT SECURITIES DEFINED.**

Section 3(a)(42) of the Securities Exchange Act of  
1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking “or” at the end of subparagraph

(C);

1           (2) by striking the period at the end of sub-  
2       paragraph (D) and inserting “; or”; and

3           (3) by adding at the end the following new sub-  
4       paragraph:

5           “(E) for purposes of section 15C as ap-  
6       plied to a bank, a qualified Canadian govern-  
7       ment obligation as defined in section 5136 of  
8       the Revised Statutes.”.

9       **SEC. 209. EFFECTIVE DATE.**

10       This subtitle shall take effect at the end of the 270-  
11   day period beginning on the date of the enactment of this  
12   Act.

13       **SEC. 210. RULE OF CONSTRUCTION.**

14       Nothing in this Act shall supersede, affect, or other-  
15   wise limit the scope and applicability of the Commodity  
16   Exchange Act (7 U.S.C. 1 et seq.).

17               **Subtitle B—Bank Investment**  
18               **Company Activities**

19       **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
20               **AFFILIATED BANK.**

21       (a) MANAGEMENT COMPANIES.—Section 17(f) of the  
22   Investment Company Act of 1940 (15 U.S.C. 80a–17(f))  
23   is amended—

24           (1) by redesignating paragraphs (1), (2), and  
25       (3) as subparagraphs (A), (B), and (C), respectively;

1           (2) by striking “(f) Every registered” and in-  
2       serting the following:

3       “(f) CUSTODY OF SECURITIES.—

4           “(1) Every registered”;

5           (3) by redesignating the second, third, fourth,  
6       and fifth sentences of such subsection as paragraphs  
7       (2) through (5), respectively, and indenting the left  
8       margin of such paragraphs appropriately; and

9           (4) by adding at the end the following new  
10      paragraph:

11           “(6) The Commission may adopt rules and reg-  
12      ulations, and issue orders, consistent with the pro-  
13      tection of investors, prescribing the conditions under  
14      which a bank, or an affiliated person of a bank, ei-  
15      ther of which is an affiliated person, promoter, orga-  
16      nizer, or sponsor of, or principal underwriter for, a  
17      registered management company may serve as custo-  
18      dian of that registered management company.”.

19      (b) UNIT INVESTMENT TRUSTS.—Section 26 of the  
20      Investment Company Act of 1940 (15 U.S.C. 80a–26) is  
21      amended—

22           (1) by redesignating subsections (b) through (e)  
23      as subsections (c) through (f), respectively; and

24           (2) by inserting after subsection (a) the follow-  
25      ing new subsection:

1       “(b) The Commission may adopt rules and regula-  
 2 tions, and issue orders, consistent with the protection of  
 3 investors, prescribing the conditions under which a bank,  
 4 or an affiliated person of a bank, either of which is an  
 5 affiliated person of a principal underwriter for, or deposi-  
 6 tor of, a registered unit investment trust, may serve as  
 7 trustee or custodian under subsection (a)(1).”.

8       (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
 9 of the Investment Company Act of 1940 (15 U.S.C. 80a–  
 10 35(a)) is amended—

11           (1) in paragraph (1), by striking “or” at the  
 12 end;

13           (2) in paragraph (2), by striking the period at  
 14 the end and inserting “; or”; and

15           (3) by inserting after paragraph (2) the follow-  
 16 ing:

17           “(3) as custodian.”.

18 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
 19 **PANY.**

20       Section 17(a) of the Investment Company Act of  
 21 1940 (15 U.S.C. 80a–17(a)) is amended—

22           (1) by striking “or” at the end of paragraph  
 23 (2);

24           (2) by striking the period at the end of para-  
 25 graph (3) and inserting “; or”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(4) to loan money or other property to such  
4 registered company, or to any company controlled by  
5 such registered company, in contravention of such  
6 rules, regulations, or orders as the Commission may  
7 prescribe or issue consistent with the protection of  
8 investors.”.

9 **SEC. 213. INDEPENDENT DIRECTORS.**

10       (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-  
11 ment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A))  
12 is amended—

13           (1) by striking clause (v) and inserting the fol-  
14 lowing new clause:

15                   “(v) any person or any affiliated per-  
16 son of a person (other than a registered in-  
17 vestment company) that, at any time dur-  
18 ing the 6-month period preceding the date  
19 of the determination of whether that per-  
20 son or affiliated person is an interested  
21 person, has executed any portfolio trans-  
22 actions for, engaged in any principal trans-  
23 actions with, or distributed shares for—

24                           “(I) the investment company;

1 “(II) any other investment com-  
2 pany having the same investment ad-  
3 viser as such investment company or  
4 holding itself out to investors as a re-  
5 lated company for purposes of invest-  
6 ment or investor services; or

7 “(III) any account over which the  
8 investment company’s investment ad-  
9 viser has brokerage placement discre-  
10 tion,”;

11 (2) by redesignating clause (vi) as clause (vii);

12 and

13 (3) by inserting after clause (v) the following  
14 new clause:

15 “(vi) any person or any affiliated per-  
16 son of a person (other than a registered in-  
17 vestment company) that, at any time dur-  
18 ing the 6-month period preceding the date  
19 of the determination of whether that per-  
20 son or affiliated person is an interested  
21 person, has loaned money or other prop-  
22 erty to—

23 “(I) the investment company;

24 “(II) any other investment com-  
25 pany having the same investment ad-



1 viser as such investment company or  
 2 holding itself out to investors as a re-  
 3 lated company for purposes of invest-  
 4 ment or investor services; or

5 “(III) any account for which the  
 6 investment company’s investment ad-  
 7 viser has borrowing authority,”.

8 (b) CONFORMING AMENDMENT.—Section  
 9 2(a)(19)(B) of the Investment Company Act of 1940 (15  
 10 U.S.C. 80a–2(a)(19)(B)) is amended—

11 (1) by striking clause (v) and inserting the fol-  
 12 lowing new clause:

13 “(v) any person or any affiliated per-  
 14 son of a person (other than a registered in-  
 15 vestment company) that, at any time dur-  
 16 ing the 6-month period preceding the date  
 17 of the determination of whether that per-  
 18 son or affiliated person is an interested  
 19 person, has executed any portfolio trans-  
 20 actions for, engaged in any principal trans-  
 21 actions with, or distributed shares for—

22 “(I) any investment company for  
 23 which the investment adviser or prin-  
 24 cipal underwriter serves as such;

1                   “(II) any investment company  
2                   holding itself out to investors, for pur-  
3                   poses of investment or investor serv-  
4                   ices, as a company related to any in-  
5                   vestment company for which the in-  
6                   vestment adviser or principal under-  
7                   writer serves as such; or

8                   “(III) any account over which the  
9                   investment adviser has brokerage  
10                  placement discretion,”;

11               (2) by redesignating clause (vi) as clause (vii);

12               and

13               (3) by inserting after clause (v) the following  
14               new clause:

15                   “(vi) any person or any affiliated per-  
16                   son of a person (other than a registered in-  
17                   vestment company) that, at any time dur-  
18                   ing the 6-month period preceding the date  
19                   of the determination of whether that per-  
20                   son or affiliated person is an interested  
21                   person, has loaned money or other prop-  
22                   erty to—

23                   “(I) any investment company for  
24                   which the investment adviser or prin-  
25                   cipal underwriter serves as such;

1                   “(II) any investment company  
 2                   holding itself out to investors, for pur-  
 3                   poses of investment or investor serv-  
 4                   ices, as a company related to any in-  
 5                   vestment company for which the in-  
 6                   vestment adviser or principal under-  
 7                   writer serves as such; or

8                   “(III) any account for which the  
 9                   investment adviser has borrowing au-  
 10                  thority,”.

11           (c) AFFILIATION OF DIRECTORS.—Section 10(c) of  
 12 the Investment Company Act of 1940 (15 U.S.C. 80a–  
 13 10(c)) is amended by striking “bank, except” and insert-  
 14 ing “bank (together with its affiliates and subsidiaries) or  
 15 any one bank holding company (together with its affiliates  
 16 and subsidiaries) (as such terms are defined in section 2  
 17 of the Bank Holding Company Act of 1956), except”.

18           (d) EFFECTIVE DATE.—The amendments made by  
 19 this section shall take effect at the end of the 1-year period  
 20 beginning on the date of enactment of this subtitle.

21 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

22           Section 35(a) of the Investment Company Act of  
 23 1940 (15 U.S.C. 80a–34(a)) is amended to read as fol-  
 24 lows:

25           “(a) MISREPRESENTATION OF GUARANTEES.—

1           “(1) IN GENERAL.—It shall be unlawful for any  
2           person, issuing or selling any security of which a  
3           registered investment company is the issuer, to rep-  
4           resent or imply in any manner whatsoever that such  
5           security or company—

6                   “(A) has been guaranteed, sponsored, rec-  
7                   ommended, or approved by the United States,  
8                   or any agency, instrumentality or officer of the  
9                   United States;

10                   “(B) has been insured by the Federal De-  
11                   posit Insurance Corporation; or

12                   “(C) is guaranteed by or is otherwise an  
13                   obligation of any bank or insured depository in-  
14                   stitution.

15           “(2) DISCLOSURES.—Any person issuing or  
16           selling the securities of a registered investment com-  
17           pany that is advised by, or sold through, a bank  
18           shall prominently disclose that an investment in the  
19           company is not insured by the Federal Deposit In-  
20           surance Corporation or any other government agen-  
21           cy. The Commission may adopt rules and regula-  
22           tions, and issue orders, consistent with the protec-  
23           tion of investors, prescribing the manner in which  
24           the disclosure under this paragraph shall be pro-  
25           vided.

1           “(3) DEFINITIONS.—The terms ‘insured deposi-  
2       tory institution’ and ‘appropriate Federal banking  
3       agency’ have the meaning given to such terms in  
4       section 3 of the Federal Deposit Insurance Act.”.

5   **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
6                   **MENT COMPANY ACT OF 1940.**

7       Section 2(a)(6) of the Investment Company Act of  
8   1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as fol-  
9   lows:

10           “(6) The term ‘broker’ has the same meaning  
11       as in the Securities Exchange Act of 1934, except  
12       that such term does not include any person solely by  
13       reason of the fact that such person is an underwriter  
14       for one or more investment companies.”.

15   **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**  
16                   **MENT COMPANY ACT OF 1940.**

17       Section 2(a)(11) of the Investment Company Act of  
18   1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as fol-  
19   lows:

20           “(11) The term ‘dealer’ has the same meaning  
21       as in the Securities Exchange Act of 1934, but does  
22       not include an insurance company or investment  
23       company.”.

1 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
2 **TION OF INVESTMENT ADVISER FOR BANKS**  
3 **THAT ADVISE INVESTMENT COMPANIES.**

4 (a) INVESTMENT ADVISER.—Section 202(a)(11) of  
5 the Investment Advisers Act of 1940 (15 U.S.C. 80b–  
6 2(a)(11)) is amended in subparagraph (A), by striking  
7 “investment company” and inserting “investment com-  
8 pany, except that the term ‘investment adviser’ includes  
9 any bank or bank holding company to the extent that such  
10 bank or bank holding company serves or acts as an invest-  
11 ment adviser to a registered investment company, but if,  
12 in the case of a bank, such services or actions are per-  
13 formed through a separately identifiable department or di-  
14 vision, the department or division, and not the bank itself,  
15 shall be deemed to be the investment adviser”.

16 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR  
17 DIVISION.—Section 202(a) of the Investment Advisers Act  
18 of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at  
19 the end the following:

20 “(26) The term ‘separately identifiable depart-  
21 ment or division’ of a bank means a unit—

22 “(A) that is under the direct supervision of  
23 an officer or officers designated by the board of  
24 directors of the bank as responsible for the day-  
25 to-day conduct of the bank’s investment adviser  
26 activities for one or more investment companies,

1 including the supervision of all bank employees  
2 engaged in the performance of such activities;  
3 and

4 “(B) for which all of the records relating  
5 to its investment adviser activities are sepa-  
6 rately maintained in or extractable from such  
7 unit’s own facilities or the facilities of the bank,  
8 and such records are so maintained or other-  
9 wise accessible as to permit independent exam-  
10 ination and enforcement by the Commission of  
11 this Act or the Investment Company Act of  
12 1940 and rules and regulations promulgated  
13 under this Act or the Investment Company Act  
14 of 1940.”.

15 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
16 **MENT ADVISERS ACT OF 1940.**

17 Section 202(a)(3) of the Investment Advisers Act of  
18 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-  
19 lows:

20 “(3) The term ‘broker’ has the same meaning  
21 as in the Securities Exchange Act of 1934.”.

1 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**  
2 **MENT ADVISERS ACT OF 1940.**

3 Section 202(a)(7) of the Investment Advisers Act of  
4 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as fol-  
5 lows:

6 “(7) The term ‘dealer’ has the same meaning as  
7 in the Securities Exchange Act of 1934, but does  
8 not include an insurance company or investment  
9 company.”.

10 **SEC. 220. INTERAGENCY CONSULTATION.**

11 The Investment Advisers Act of 1940 (15 U.S.C.  
12 80b–1 et seq.) is amended by inserting after section 210  
13 the following new section:

14 **“SEC. 210A. CONSULTATION.**

15 “(a) EXAMINATION RESULTS AND OTHER INFORMA-  
16 TION.—

17 “(1) The appropriate Federal banking agency  
18 shall provide the Commission upon request the re-  
19 sults of any examination, reports, records, or other  
20 information to which such agency may have access  
21 with respect to the investment advisory activities—

22 “(A) of any—

23 “(i) bank holding company;

24 “(ii) bank; or

25 “(iii) separately identifiable depart-  
26 ment or division of a bank,



1           that is registered under section 203 of this title;  
2           and

3           “(B) in the case of a bank holding com-  
4           pany or bank that has a subsidiary or a sepa-  
5           rately identifiable department or division reg-  
6           istered under that section, of such bank or bank  
7           holding company.

8           “(2) The Commission shall provide to the ap-  
9           propriate Federal banking agency upon request the  
10          results of any examination, reports, records, or other  
11          information with respect to the investment advisory  
12          activities of any bank holding company, bank, or  
13          separately identifiable department or division of a  
14          bank, any of which is registered under section 203  
15          of this title.

16          “(b) EFFECT ON OTHER AUTHORITY.—Nothing in  
17          this section shall limit in any respect the authority of the  
18          appropriate Federal banking agency with respect to such  
19          bank holding company, bank, or department or division  
20          under any provision of law.

21          “(c) DEFINITION.—For purposes of this section, the  
22          term ‘appropriate Federal banking agency’ shall have the  
23          same meaning as in section 3 of the Federal Deposit In-  
24          surance Act.”.

1 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

2 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
3 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
4 amended by striking “or any interest or participation in  
5 any common trust fund or similar fund maintained by a  
6 bank exclusively for the collective investment and reinvest-  
7 ment of assets contributed thereto by such bank in its ca-  
8 pacity as trustee, executor, administrator, or guardian”  
9 and inserting “or any interest or participation in any com-  
10 mon trust fund or similar fund that is excluded from the  
11 definition of the term ‘investment company’ under section  
12 3(c)(3) of the Investment Company Act of 1940”.

13 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
14 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934  
15 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-  
16 lows:

17 “(iii) any interest or participation in any  
18 common trust fund or similar fund that is ex-  
19 cluded from the definition of the term ‘invest-  
20 ment company’ under section 3(c)(3) of the In-  
21 vestment Company Act of 1940;”.

22 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
23 3(c)(3) of the Investment Company Act of 1940 (15  
24 U.S.C. 80a–3(c)(3)) is amended by inserting before the  
25 period the following: “, if—

1           “(A) such fund is employed by the bank  
 2           solely as an aid to the administration of trusts,  
 3           estates, or other accounts created and main-  
 4           tained for a fiduciary purpose;

5           “(B) except in connection with the ordi-  
 6           nary advertising of the bank’s fiduciary serv-  
 7           ices, interests in such fund are not—

8                   “(i) advertised; or

9                   “(ii) offered for sale to the general  
 10           public; and

11           “(C) fees and expenses charged by such  
 12           fund are not in contravention of fiduciary prin-  
 13           ciples established under applicable Federal or  
 14           State law”.

15 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
 16 **ING CONTROLLING INTEREST IN REG-**  
 17 **ISTERED INVESTMENT COMPANY.**

18           Section 15 of the Investment Company Act of 1940  
 19 (15 U.S.C. 80a–15) is amended by adding at the end the  
 20 following new subsection:

21           “(g) CONTROLLING INTEREST IN INVESTMENT COM-  
 22 PANY PROHIBITED.—

23           “(1) IN GENERAL.—If an investment adviser to  
 24           a registered investment company, or an affiliated  
 25           person of that investment adviser, holds a control-

1       ling interest in that registered investment company  
2       in a trustee or fiduciary capacity, such person  
3       shall—

4               “(A) if it holds the shares in a trustee or  
5       fiduciary capacity with respect to any employee  
6       benefit plan subject to the Employee Retirement  
7       Income Security Act of 1974, transfer the  
8       power to vote the shares of the investment com-  
9       pany through to another person acting in a fi-  
10      diciary capacity with respect to the plan who is  
11      not an affiliated person of that investment ad-  
12      viser or any affiliated person thereof; or

13              “(B) if it holds the shares in a trustee or  
14      fiduciary capacity with respect to any person or  
15      entity other than an employee benefit plan sub-  
16      ject to the Employee Retirement Income Secu-  
17      rity Act of 1974—

18              “(i) transfer the power to vote the  
19      shares of the investment company through  
20      to—

21              “(I) the beneficial owners of the  
22      shares;

23              “(II) another person acting in a  
24      fiduciary capacity who is not an affili-

1           ated person of that investment adviser  
2           or any affiliated person thereof; or

3                   “(III) any person authorized to  
4           receive statements and information  
5           with respect to the trust who is not an  
6           affiliated person of that investment  
7           adviser or any affiliated person there-  
8           of;

9                   “(ii) vote the shares of the investment  
10          company held by it in the same proportion  
11          as shares held by all other shareholders of  
12          the investment company; or

13                   “(iii) vote the shares of the invest-  
14          ment company as otherwise permitted  
15          under such rules, regulations, or orders as  
16          the Commission may prescribe or issue  
17          consistent with the protection of investors.

18                   “(2) EXEMPTION.—Paragraph (1) shall not  
19          apply to any investment adviser to a registered in-  
20          vestment company, or any affiliated person of that  
21          investment adviser, that holds shares of the invest-  
22          ment company in a trustee or fiduciary capacity if  
23          that registered investment company consists solely of  
24          assets held in such capacities.

1           “(3) SAFE HARBOR.—No investment adviser to  
2           a registered investment company or any affiliated  
3           person of such investment adviser shall be deemed to  
4           have acted unlawfully or to have breached a fidu-  
5           ciary duty under State or Federal law solely by rea-  
6           son of acting in accordance with clause (i), (ii), or  
7           (iii) of paragraph (1)(B).”.

8   **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

9           Section 2(a)(5) of the Investment Company Act of  
10          1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking  
11          “(A) a banking institution organized under the laws of the  
12          United States” and inserting “(A) a depository institution  
13          (as defined in section 3 of the Federal Deposit Insurance  
14          Act) or a branch or agency of a foreign bank (as such  
15          terms are defined in section 1(b) of the International  
16          Banking Act of 1978)”.

17   **SEC. 224. CONFORMING AMENDMENT.**

18          Section 202 of the Investment Advisers Act of 1940  
19          (15 U.S.C. 80b–2) is amended by adding at the end the  
20          following new subsection:

21          “(c) CONSIDERATION OF PROMOTION OF EFFI-  
22          CIENCY, COMPETITION, AND CAPITAL FORMATION.—  
23          Whenever pursuant to this title the Commission is en-  
24          gaged in rulemaking and is required to consider or deter-  
25          mine whether an action is necessary or appropriate in the

1 public interest, the Commission shall also consider, in ad-  
 2 dition to the protection of investors, whether the action  
 3 will promote efficiency, competition, and capital forma-  
 4 tion.”.

5 **SEC. 225. EFFECTIVE DATE.**

6 This subtitle shall take effect 90 days after the date  
 7 of the enactment of this Act.

8 **Subtitle C—Securities and Ex-**  
 9 **change Commission Supervision**  
 10 **of Investment Bank Holding**  
 11 **Companies**

12 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**  
 13 **COMPANIES BY THE SECURITIES AND EX-**  
 14 **CHANGE COMMISSION.**

15 (a) AMENDMENT.—Section 17 of the Securities Ex-  
 16 change Act of 1934 (15 U.S.C. 78q) is amended—

17 (1) by redesignating subsection (i) as subsection  
 18 (l); and

19 (2) by inserting after subsection (h) the follow-  
 20 ing new subsections:

21 “(i) INVESTMENT BANK HOLDING COMPANIES.—

22 “(1) ELECTIVE SUPERVISION OF AN INVEST-  
 23 MENT BANK HOLDING COMPANY NOT HAVING A  
 24 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

1           “(A) IN GENERAL.—An investment bank  
2 holding company that is not—

3           “(i) an affiliate of a wholesale finan-  
4 cial institution, an insured bank (other  
5 than an institution described in subpara-  
6 graph (D), (F), or (G) of section 2(c)(2),  
7 or held under section 4(f), of the Bank  
8 Holding Company Act of 1956), or a sav-  
9 ings association;

10           “(ii) a foreign bank, foreign company,  
11 or company that is described in section  
12 8(a) of the International Banking Act of  
13 1978; or

14           “(iii) a foreign bank that controls, di-  
15 rectly or indirectly, a corporation chartered  
16 under section 25A of the Federal Reserve  
17 Act,

18 may elect to become supervised by filing with  
19 the Commission a notice of intention to become  
20 supervised, pursuant to subparagraph (B) of  
21 this paragraph. Any investment bank holding  
22 company filing such a notice shall be supervised  
23 in accordance with this section and comply with  
24 the rules promulgated by the Commission appli-



1 cable to supervised investment bank holding  
2 companies.

3 “(B) NOTIFICATION OF STATUS AS A SU-  
4 PERVISED INVESTMENT BANK HOLDING COM-  
5 PANY.—An investment bank holding company  
6 that elects under subparagraph (A) to become  
7 supervised by the Commission shall file with the  
8 Commission a written notice of intention to be-  
9 come supervised by the Commission in such  
10 form and containing such information and doc-  
11 uments concerning such investment bank hold-  
12 ing company as the Commission, by rule, may  
13 prescribe as necessary or appropriate in fur-  
14 therance of the purposes of this section. Unless  
15 the Commission finds that such supervision is  
16 not necessary or appropriate in furtherance of  
17 the purposes of this section, such supervision  
18 shall become effective 45 days after receipt of  
19 such written notice by the Commission or with-  
20 in such shorter time period as the Commission,  
21 by rule or order, may determine.

22 “(2) ELECTION NOT TO BE SUPERVISED BY  
23 THE COMMISSION AS AN INVESTMENT BANK HOLD-  
24 ING COMPANY.—

1           “(A) VOLUNTARY WITHDRAWAL.—A su-  
2           pervised investment bank holding company that  
3           is supervised pursuant to paragraph (1) may,  
4           upon such terms and conditions as the Commis-  
5           sion deems necessary or appropriate, elect not  
6           to be supervised by the Commission by filing a  
7           written notice of withdrawal from Commission  
8           supervision. Such notice shall not become effec-  
9           tive until one year after receipt by the Commis-  
10          sion, or such shorter or longer period as the  
11          Commission deems necessary or appropriate to  
12          ensure effective supervision of the material  
13          risks to the supervised investment bank holding  
14          company and to the affiliated broker or dealer,  
15          or to prevent evasion of the purposes of this  
16          section.

17          “(B) DISCONTINUATION OF COMMISSION  
18          SUPERVISION.—If the Commission finds that  
19          any supervised investment bank holding com-  
20          pany that is supervised pursuant to paragraph  
21          (1) is no longer in existence or has ceased to be  
22          an investment bank holding company, or if the  
23          Commission finds that continued supervision of  
24          such a supervised investment bank holding com-  
25          pany is not consistent with the purposes of this

1 section, the Commission may discontinue the  
2 supervision pursuant to a rule or order, if any,  
3 promulgated by the Commission under this sec-  
4 tion.

5 “(3) SUPERVISION OF INVESTMENT BANK  
6 HOLDING COMPANIES.—

7 “(A) RECORDKEEPING AND REPORTING.—

8 “(i) IN GENERAL.—Every supervised  
9 investment bank holding company and  
10 each affiliate thereof shall make and keep  
11 for prescribed periods such records, furnish  
12 copies thereof, and make such reports, as  
13 the Commission may require by rule, in  
14 order to keep the Commission informed as  
15 to—

16 “(I) the company’s or affiliate’s  
17 activities, financial condition, policies,  
18 systems for monitoring and control-  
19 ling financial and operational risks,  
20 and transactions and relationships be-  
21 tween any broker or dealer affiliate of  
22 the supervised investment bank hold-  
23 ing company; and

24 “(II) the extent to which the  
25 company or affiliate has complied with

1 the provisions of this Act and regula-  
2 tions prescribed and orders issued  
3 under this Act.

4 “(ii) FORM AND CONTENTS.—Such  
5 records and reports shall be prepared in  
6 such form and according to such specifica-  
7 tions (including certification by an inde-  
8 pendent public accountant), as the Com-  
9 mission may require and shall be provided  
10 promptly at any time upon request by the  
11 Commission. Such records and reports may  
12 include—

13 “(I) a balance sheet and income  
14 statement;

15 “(II) an assessment of the con-  
16 solidated capital of the supervised in-  
17 vestment bank holding company;

18 “(III) an independent auditor’s  
19 report attesting to the supervised in-  
20 vestment bank holding company’s  
21 compliance with its internal risk man-  
22 agement and internal control objec-  
23 tives; and

24 “(IV) reports concerning the ex-  
25 tent to which the company or affiliate

1           has complied with the provisions of  
2           this title and any regulations pre-  
3           scribed and orders issued under this  
4           title.

5           “(B) USE OF EXISTING REPORTS.—

6           “(i) IN GENERAL.—The Commission  
7           shall, to the fullest extent possible, accept  
8           reports in fulfillment of the requirements  
9           under this paragraph that the supervised  
10          investment bank holding company or its af-  
11          filiates have been required to provide to  
12          another appropriate regulatory agency or  
13          self-regulatory organization.

14          “(ii) AVAILABILITY.—A supervised in-  
15          vestment bank holding company or an af-  
16          filiate of such company shall provide to the  
17          Commission, at the request of the Commis-  
18          sion, any report referred to in clause (i).

19          “(C) EXAMINATION AUTHORITY.—

20          “(i) FOCUS OF EXAMINATION AU-  
21          THORITY.—The Commission may make ex-  
22          aminations of any supervised investment  
23          bank holding company and any affiliate of  
24          such company in order to—

1 “(I) inform the Commission re-  
2 garding—

3 “(aa) the nature of the oper-  
4 ations and financial condition of  
5 the supervised investment bank  
6 holding company and its affili-  
7 ates;

8 “(bb) the financial and oper-  
9 ational risks within the super-  
10 vised investment bank holding  
11 company that may affect any  
12 broker or dealer controlled by  
13 such supervised investment bank  
14 holding company; and

15 “(cc) the systems of the su-  
16 pervised investment bank holding  
17 company and its affiliates for  
18 monitoring and controlling those  
19 risks; and

20 “(II) monitor compliance with  
21 the provisions of this subsection, pro-  
22 visions governing transactions and re-  
23 lationships between any broker or  
24 dealer affiliated with the supervised  
25 investment bank holding company and

1 any of the company's other affiliates,  
2 and applicable provisions of sub-  
3 chapter II of chapter 53, title 31,  
4 United States Code (commonly re-  
5 ferred to as the 'Bank Secrecy Act')  
6 and regulations thereunder.

7 “(ii) RESTRICTED FOCUS OF EXAMI-  
8 NATIONS.—The Commission shall limit the  
9 focus and scope of any examination of a  
10 supervised investment bank holding com-  
11 pany to—

12 “(I) the company; and

13 “(II) any affiliate of the company  
14 that, because of its size, condition, or  
15 activities, the nature or size of the  
16 transactions between such affiliate  
17 and any affiliated broker or dealer, or  
18 the centralization of functions within  
19 the holding company system, could, in  
20 the discretion of the Commission,  
21 have a materially adverse effect on the  
22 operational or financial condition of  
23 the broker or dealer.

24 “(iii) DEFERENCE TO OTHER EXAMI-  
25 NATIONS.—For purposes of this subpara-

1 graph, the Commission shall, to the fullest  
2 extent possible, use the reports of examina-  
3 tion of an institution described in subpara-  
4 graph (D), (F), or (G) of section 2(c)(2),  
5 or held under section 4(f), of the Bank  
6 Holding Company Act of 1956 made by  
7 the appropriate regulatory agency, or of a  
8 licensed insurance company made by the  
9 appropriate State insurance regulator.

10 “(4) HOLDING COMPANY CAPITAL.—

11 “(A) AUTHORITY.—If the Commission  
12 finds that it is necessary to adequately super-  
13 vise investment bank holding companies and  
14 their broker or dealer affiliates consistent with  
15 the purposes of this subsection, the Commission  
16 may adopt capital adequacy rules for supervised  
17 investment bank holding companies.

18 “(B) METHOD OF CALCULATION.—In de-  
19 veloping rules under this paragraph:

20 “(i) DOUBLE LEVERAGE.—The Com-  
21 mission shall consider the use by the su-  
22 pervised investment bank holding company  
23 of debt and other liabilities to fund capital  
24 investments in affiliates.



1                   “(ii) NO UNWEIGHTED CAPITAL  
2                   RATIO.—The Commission shall not impose  
3                   under this section a capital ratio that is  
4                   not based on appropriate risk-weighting  
5                   considerations.

6                   “(iii) NO CAPITAL REQUIREMENT ON  
7                   REGULATED ENTITIES.—The Commission  
8                   shall not, by rule, regulation, guideline,  
9                   order or otherwise, impose any capital ade-  
10                  quacy provision on a nonbanking affiliate  
11                  (other than a broker or dealer) that is in  
12                  compliance with applicable capital require-  
13                  ments of another Federal regulatory au-  
14                  thority or State insurance authority.

15                  “(iv) APPROPRIATE EXCLUSIONS.—  
16                  The Commission shall take full account of  
17                  the applicable capital requirements of an-  
18                  other Federal regulatory authority or State  
19                  insurance regulator.

20                  “(C) INTERNAL RISK MANAGEMENT MOD-  
21                  ELS.—The Commission may incorporate inter-  
22                  nal risk management models into its capital  
23                  adequacy rules for supervised investment bank  
24                  holding companies.

1           “(5) FUNCTIONAL REGULATION OF BANKING  
2           AND INSURANCE ACTIVITIES OF SUPERVISED IN-  
3           VESTMENT BANK HOLDING COMPANIES.—The Com-  
4           mission shall defer to—

5                   “(A) the appropriate regulatory agency  
6                   with regard to all interpretations of, and the  
7                   enforcement of, applicable banking laws relating  
8                   to the activities, conduct, ownership, and oper-  
9                   ations of banks, and institutions described in  
10                  subparagraph (D), (F), and (G) of section  
11                  2(c)(2), or held under section 4(f), of the Bank  
12                  Holding Company Act of 1956; and

13                  “(B) the appropriate State insurance regu-  
14                  lators with regard to all interpretations of, and  
15                  the enforcement of, applicable State insurance  
16                  laws relating to the activities, conduct, and op-  
17                  erations of insurance companies and insurance  
18                  agents.

19           “(6) DEFINITIONS.—For purposes of this sub-  
20           section and subsection (j)—

21                   “(A) The term ‘investment bank holding  
22                   company’ means—

23                           “(i) any person other than a natural  
24                           person that owns or controls one or more  
25                           brokers or dealers; and

1 “(ii) the associated persons of the in-  
2 vestment bank holding company.

3 “(B) The term ‘supervised investment  
4 bank holding company’ means any investment  
5 bank holding company that is supervised by the  
6 Commission pursuant to this subsection.

7 “(C) The terms ‘affiliate’, ‘bank’, ‘bank  
8 holding company’, ‘company’, ‘control’, and  
9 ‘savings association’ have the meanings given to  
10 those terms in section 2 of the Bank Holding  
11 Company Act of 1956 (12 U.S.C. 1841).

12 “(D) The term ‘insured bank’ has the  
13 meaning given to that term in section 3 of the  
14 Federal Deposit Insurance Act.

15 “(E) The term ‘foreign bank’ has the  
16 meaning given to that term in section 1(b)(7)  
17 of the International Banking Act of 1978.

18 “(F) The terms “person associated with an  
19 investment bank holding company’ and “associ-  
20 ated person of an investment bank holding com-  
21 pany’ means any person directly or indirectly  
22 controlling, controlled by, or under common  
23 control with, an investment bank holding com-  
24 pany.

25 “(j) COMMISSION BACKUP AUTHORITY.—

1           “(1) AUTHORITY.—The Commission may make  
2       inspections of any wholesale financial holding com-  
3       pany that—

4           “(A) controls a wholesale financial institu-  
5       tion;

6           “(B) is not a foreign bank; and

7           “(C) does not control an insured bank  
8       (other than an institution permitted under sub-  
9       paragraph (D), (F), or (G) of section 2(c)(2),  
10      or held under section 4(f), of the Bank Holding  
11      Company Act of 1956) or a savings association,  
12      and any affiliate of such company, for the purpose  
13      of monitoring and enforcing compliance by the  
14      wholesale financial holding company with the Fed-  
15      eral securities laws.

16          “(2) LIMITATION.—The Commission shall limit  
17      the focus and scope of any inspection under para-  
18      graph (1) to those transactions, policies, procedures,  
19      or records that are reasonably necessary to monitor  
20      and enforce compliance by the wholesale financial  
21      holding company or any affiliate with the Federal  
22      securities laws.

23          “(3) DEFERENCE TO EXAMINATIONS.—To the  
24      fullest extent possible, the Commission shall use, for

1 the purposes of this subsection, the reports of exami-  
2 nations—

3 “(A) made by the Board of Governors of  
4 the Federal Reserve System of any wholesale fi-  
5 nancial holding company that is supervised by  
6 the Board;

7 “(B) made by or on behalf of any State  
8 regulatory agency responsible for the super-  
9 vision of an insurance company of any licensed  
10 insurance company; and

11 “(C) made by any Federal or State bank-  
12 ing agency of any bank or institution described  
13 in subparagraph (D), (F), or (G) of section  
14 2(c)(2), or held under section 4(f), of the Bank  
15 Holding Company Act of 1956.

16 “(4) NOTICE.—To the fullest extent possible,  
17 the Commission shall notify the appropriate regu-  
18 latory agency prior to conducting an inspection of a  
19 wholesale financial institution or institution de-  
20 scribed in subparagraph (D), (F), or (G) of section  
21 2(c)(2), or held under section 4(f), of the Bank  
22 Holding Company Act of 1956.

23 “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-  
24 MATION.—Notwithstanding any other provision of law, the  
25 Commission shall not be compelled to disclose any infor-

1 mation required to be reported under subsection (h) or  
2 (i) or any information supplied to the Commission by any  
3 domestic or foreign regulatory agency that relates to the  
4 financial or operational condition of any associated person  
5 of a broker or dealer, investment bank holding company,  
6 or any affiliate of an investment bank holding company.  
7 Nothing in this subsection shall authorize the Commission  
8 to withhold information from Congress, or prevent the  
9 Commission from complying with a request for informa-  
10 tion from any other Federal department or agency or any  
11 self-regulatory organization requesting the information for  
12 purposes within the scope of its jurisdiction, or complying  
13 with an order of a court of the United States in an action  
14 brought by the United States or the Commission. For pur-  
15 poses of section 552 of title 5, United States Code, this  
16 subsection shall be considered a statute described in sub-  
17 section (b)(3)(B) of such section 552. In prescribing regu-  
18 lations to carry out the requirements of this subsection,  
19 the Commission shall designate information described in  
20 or obtained pursuant to subparagraphs (A), (B), and (C)  
21 of subsection (i)(5) as confidential information for pur-  
22 poses of section 24(b)(2) of this title.”.

23 (b) CONFORMING AMENDMENTS.—

1           (1) Section 3(a)(34) of the Securities Exchange  
2       Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by  
3       adding at the end the following new subparagraphs:

4           “(H) When used with respect to an institu-  
5       tion described in subparagraph (D), (F), or (G)  
6       of section 2(c)(2), or held under section 4(f), of  
7       the Bank Holding Company Act of 1956—

8           “(i) the Comptroller of the Currency,  
9       in the case of a national bank or a bank  
10      in the District of Columbia examined by  
11      the Comptroller of the Currency;

12          “(ii) the Board of Governors of the  
13      Federal Reserve System, in the case of a  
14      State member bank of the Federal Reserve  
15      System or any corporation chartered under  
16      section 25A of the Federal Reserve Act;

17          “(iii) the Federal Deposit Insurance  
18      Corporation, in the case of any other bank  
19      the deposits of which are insured in ac-  
20      cordance with the Federal Deposit Insur-  
21      ance Act; or

22          “(iv) the Commission in the case of all  
23      other such institutions.”.

1           (2) Section 1112(e) of the Right to Financial  
2       Privacy Act of 1978 (12 U.S.C. 3412(e)) is amend-  
3       ed—

4                   (A) by striking “this title” and inserting  
5       “law”; and

6                   (B) by inserting “, examination reports”  
7       after “financial records”.

## 8                   **Subtitle D—Study**

### 9       **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 10                   **CONSUMERS OF UNINSURED PRODUCTS.**

11       Within one year after the date of enactment of this  
12       Act, the Comptroller General of the United States shall  
13       submit a report to the Congress regarding the efficacy,  
14       costs, and benefits of requiring that any depository insti-  
15       tution that accepts federally insured deposits and that, di-  
16       rectly or through a contractual or other arrangement with  
17       a broker, dealer, or agent, buys from, sells to, or effects  
18       transactions for retail investors in securities or consumers  
19       of insurance to inform such investors and consumers  
20       through the use of a logo or seal that the security or insur-  
21       ance is not insured by the Federal Deposit Insurance Cor-  
22       poration.



1 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**  
2 **WITH ACQUIRING FINANCIAL PRODUCTS.**

3 Before the end of the 1-year period beginning on the  
4 date of the enactment of this Act, the Comptroller General  
5 of the United States shall submit a report to the Congress  
6 regarding the efficacy and benefits of uniformly limiting  
7 any commissions, fees, markups, or other costs incurred  
8 by customers in the acquisition of financial products.

9 **Subtitle E—Disclosure of Customer**  
10 **Costs of Acquiring Financial**  
11 **Products**

12 **SEC. 251. IMPROVED AND CONSISTENT DISCLOSURE.**

13 (a) REVISED REGULATIONS REQUIRED.—Within one  
14 year after the date of enactment of this Act, each Federal  
15 financial regulatory authority shall prescribe rules, or revi-  
16 sions to its rules, to improve the accuracy, simplicity, and  
17 completeness, and to make more consistent, the disclosure  
18 of information by persons subject to the jurisdiction of  
19 such regulatory authority concerning any commissions,  
20 fees, markups, or other costs incurred by customers in the  
21 acquisition of financial products.

22 (b) CONSULTATION.—In prescribing rules and revi-  
23 sions under subsection (a), the Federal financial regu-  
24 latory authorities shall consult with each other and with  
25 appropriate State financial regulatory authorities.

1       (c) CONSIDERATION OF EXISTING DISCLOSURES.—

2   In prescribing rules and revisions under subsection (a),  
3   the Federal financial regulatory authorities shall consider  
4   the sufficiency and appropriateness of then existing laws  
5   and rules applicable to persons subject to their jurisdic-  
6   tion, and may prescribe exemptions from the rules and re-  
7   visions required by subsection (a) to the extent appro-  
8   priate in light of the objective of this section to increase  
9   the consistency of disclosure practices.

10       (d) ENFORCEMENT.—Any rule prescribed by a Fed-  
11   eral financial regulatory authority pursuant to this section  
12   shall, for purposes of enforcement, be treated as a rule  
13   prescribed by such regulatory authority pursuant to the  
14   statute establishing such regulatory authority’s jurisdic-  
15   tion over the persons to whom such rule applies.

16       (e) DEFINITION.—As used in this section, the term  
17   “Federal financial regulatory authority” means the Board  
18   of Governors of the Federal Reserve System, the Securi-  
19   ties and Exchange Commission, the Comptroller of the  
20   Currency, the Federal Deposit Insurance Corporation, the  
21   Commodity Futures Trading Commission, and any self-  
22   regulatory organization under the supervision of any of  
23   the foregoing.

1           **TITLE III—INSURANCE**  
2           **Subtitle A—State Regulation of**  
3           **Insurance**

4   **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
5           **ANCE.**

6           The Act entitled “An Act to express the intent of the  
7 Congress with reference to the regulation of the business  
8 of insurance” and approved March 9, 1945 (15 U.S.C.  
9 1011 et seq.), commonly referred to as the “McCarran-  
10 Ferguson Act”) remains the law of the United States.

11   **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
12           **MENTS.**

13           No person or entity shall provide insurance in a State  
14 as principal or agent unless such person or entity is li-  
15 censed as required by the appropriate insurance regulator  
16 of such State in accordance with the relevant State insur-  
17 ance law, subject to section 104 of this Act.

18   **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

19           The insurance sales activity of any person or entity  
20 shall be functionally regulated by the States, subject to  
21 section 104 of this Act.

22   **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**  
23           **BANKS.**

24           (a) IN GENERAL.—Except as provided in section 306,  
25 a national bank and the subsidiaries of a national bank

1 may not provide insurance in a State as principal except  
2 that this prohibition shall not apply to authorized prod-  
3 ucts.

4 (b) AUTHORIZED PRODUCTS.—For the purposes of  
5 this section, a product is authorized if—

6 (1) as of January 1, 1997, the Comptroller of  
7 the Currency had determined in writing that na-  
8 tional banks may provide such product as principal,  
9 or national banks were in fact lawfully providing  
10 such product as principal;

11 (2) no court of relevant jurisdiction had, by  
12 final judgment, overturned a determination of the  
13 Comptroller of the Currency that national banks  
14 may provide such product as principal; and

15 (3) the product is not title insurance, or an an-  
16 nuity contract the income of which is subject to tax  
17 treatment under section 72 of the Internal Revenue  
18 Code of 1986.

19 (c) DEFINITION.—For purposes of this section, the  
20 term “insurance” means—

21 (1) any product regulated as insurance as of  
22 January 1, 1997, in accordance with the relevant  
23 State insurance law, in the State in which the prod-  
24 uct is provided;

1           (2) any product first offered after January 1,  
2       1997, which—

3           (A) a State insurance regulator determines  
4       shall be regulated as insurance in the State in  
5       which the product is provided because the prod-  
6       uct insures, guarantees, or indemnifies against  
7       liability, loss of life, loss of health, or loss  
8       through damage to or destruction of property,  
9       including, but not limited to, surety bonds, life  
10      insurance, health insurance, title insurance, and  
11      property and casualty insurance (such as pri-  
12      vate passenger or commercial automobile,  
13      homeowners, mortgage, commercial multiperil,  
14      general liability, professional liability, workers'  
15      compensation, fire and allied lines, farm owners  
16      multiperil, aircraft, fidelity, surety, medical  
17      malpractice, ocean marine, inland marine, and  
18      boiler and machinery insurance); and

19           (B) is not a product or service of a bank  
20      that is—

21           (i) a deposit product;

22           (ii) a loan, discount, letter of credit,  
23      or other extension of credit;

24           (iii) a trust or other fiduciary service;

1           (iv) a qualified financial contract (as  
2           defined in or determined pursuant to sec-  
3           tion 11(e)(8)(D)(i) of the Federal Deposit  
4           Insurance Act); or

5           (v) a financial guaranty, except that  
6           this subparagraph (B) shall not apply to a  
7           product that includes an insurance compo-  
8           nent such that if the product is offered or  
9           proposed to be offered by the bank as prin-  
10          cipal—

11                 (I) it would be treated as a life  
12                 insurance contract under section 7702  
13                 of the Internal Revenue Code of 1986,  
14                 as amended; or

15                 (II) in the event that the product  
16                 is not a letter of credit or other simi-  
17                 lar extension of credit, a qualified fi-  
18                 nancial contract, or a financial guar-  
19                 anty, it would qualify for treatment  
20                 for losses incurred with respect to  
21                 such product under section 832(b)(5)  
22                 of the Internal Revenue Code of 1986,  
23                 as amended, if the bank were subject  
24                 to tax as an insurance company under  
25                 section 831 of such Code; or

1           (3) any annuity contract the income on which  
2           is subject to tax treatment under section 72 of the  
3           Internal Revenue Code of 1986, as amended.

4   **SEC. 305. NEW BANK AGENCY ACTIVITIES ONLY THROUGH**  
5                   **ACQUISITION OF EXISTING LICENSED**  
6                   **AGENTS.**

7           If a national bank or a subsidiary of a national bank  
8           is not providing insurance as agent in a State as of the  
9           date of the enactment of this Act, the national bank and  
10          the subsidiary of the national bank may provide insurance  
11          (which such bank or subsidiary is otherwise authorized to  
12          provide) as agent in such State after such date only by  
13          acquiring a company which has been licensed by the ap-  
14          propriate State regulator to provide insurance as agent in  
15          such State for not less than 2 years before such acquisi-  
16          tion. This section shall cease to have effect 5 years after  
17          the date of the enactment of this Act.

18   **SEC. 306. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
19                   **BANKS AND THEIR AFFILIATES.**

20          (a) AUTHORITY.—

21               (1) IN GENERAL.—Notwithstanding any other  
22               provision of this Act or any other law, no national  
23               bank, and no subsidiary of a national bank, may en-  
24               gage in any activity involving the underwriting or  
25               sale of title insurance other than title insurance ac-

1       tivities in which such national bank or subsidiary  
2       was actively and lawfully engaged before the date of  
3       the enactment of this Act.

4           (2) INSURANCE AFFILIATE.—In the case of a  
5       national bank which has an affiliate which provides  
6       insurance as principal and is not a subsidiary of the  
7       bank, the national bank and any subsidiary of the  
8       national bank may not engage in any activity involv-  
9       ing the underwriting or sale of title insurance pursu-  
10      ant to paragraph (1).

11          (3) INSURANCE SUBSIDIARY.—In the case of a  
12      national bank which has a subsidiary which provides  
13      insurance as principal and has no affiliate which  
14      provides insurance as principal and is not a subsidi-  
15      ary, the national bank may not engage in any activ-  
16      ity involving the underwriting or sale of title insur-  
17      ance pursuant to paragraph (1).

18          (4) AFFILIATE AND SUBSIDIARY DEFINED.—  
19      For purposes of this section, the terms “affiliate”  
20      and “subsidiary” have the meaning given such terms  
21      in section 2 of the Bank Holding Company Act of  
22      1956.

23          (b) PARITY EXCEPTION.—Notwithstanding sub-  
24      section (a), in the case of any State in which banks orga-  
25      nized under the laws of such State were authorized to sell



1 title insurance as agent as of January 1, 1997, a national  
2 bank and a subsidiary of a national bank may sell title  
3 insurance as agent in such State in the same manner and  
4 to the same extent such State banks are authorized to sell  
5 title insurance as agent in such State.

6 **SEC. 307. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
7 **TION FOR FINANCIAL REGULATORS.**

8 (a) FILING IN COURT OF APPEAL.—In the case of  
9 a regulatory conflict between a State insurance regulator  
10 and a Federal regulator as to whether any product is or  
11 is not insurance as defined in section 304(c) of this Act,  
12 or whether a State statute, regulation, order, or interpre-  
13 tation regarding any insurance sales or solicitation activity  
14 is properly treated as preempted under Federal law, either  
15 regulator may seek expedited judicial review of such deter-  
16 mination by the United States Court of Appeals for the  
17 circuit in which the State is located or in the United  
18 States Court of Appeals for the District of Columbia Cir-  
19 cuit by filing a petition for review in such court.

20 (b) EXPEDITED REVIEW.—The United States court  
21 of appeals in which a petition for review is filed in accord-  
22 ance with paragraph (1) shall complete all action on such  
23 petition, including rendering a judgment, before the end  
24 of the 60-day period beginning on the date such petition

1 is filed, unless all parties to such proceeding agree to any  
2 extension of such period.

3 (c) SUPREME COURT REVIEW.—Any request for  
4 certiori to the Supreme Court of the United States of any  
5 judgment of a United States court of appeals with respect  
6 to a petition for review under this section shall be filed  
7 with the United States Supreme Court as soon as prac-  
8 ticable after such judgment is issued.

9 (d) STATUTE OF LIMITATION.—No action may be  
10 filed under this section challenging an order, ruling, deter-  
11 mination, or other action of a Federal financial regulator  
12 or State insurance regulator after the later of—

13 (1) the end of the 12-month period beginning  
14 on the date the first public notice is made of such  
15 order, ruling, or determination in its final form; or

16 (2) the end of the 6-month period beginning on  
17 the date such order, ruling, or determination takes  
18 effect.

19 (e) STANDARD OF REVIEW.—The court shall decide  
20 an action filed under this section based on its review on  
21 the merits of all questions presented under State and Fed-  
22 eral law, including the nature of the product or activity  
23 and the history and purpose of its regulation under State  
24 and Federal law, without unequal deference.

1 **SEC. 308. CONSUMER PROTECTION REGULATIONS.**

2 (a) REGULATIONS REQUIRED.—

3 (1) IN GENERAL.—The Federal Deposit Insur-  
4 ance Act (12 U.S.C. 1811 et seq.) is amended by  
5 adding at the end the following new section:

6 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

7 “(a) REGULATIONS REQUIRED.—

8 “(1) IN GENERAL.—The Federal banking agen-  
9 cies shall prescribe and publish in final form, before  
10 the end of the 1-year period beginning on the date  
11 of the enactment of this Act, consumer protection  
12 regulations (which the agencies jointly determine to  
13 be appropriate) that—

14 “(A) apply to retail sales practices, solici-  
15 tations, advertising, or offers of any insurance  
16 product by any insured depository institution or  
17 wholesale financial institution or any person  
18 who is engaged in such activities at an office of  
19 the institution or on behalf of the institution;  
20 and

21 “(B) are consistent with the requirements  
22 of this Act and provide such additional protec-  
23 tions for consumers to whom such sales, solici-  
24 tations, advertising, or offers are directed as  
25 the agency determines to be appropriate.

1           “(2) APPLICABILITY TO SUBSIDIARIES.—The  
2       regulations prescribed pursuant to paragraph (1)  
3       shall extend such protections to any subsidiaries of  
4       an insured depository institution, as deemed appro-  
5       priate by the regulators referred to in paragraph (3),  
6       where such extension is determined to be necessary  
7       to ensure the consumer protections provided by this  
8       section.

9           “(3) CONSULTATION AND JOINT REGULA-  
10       TIONS.—The Federal banking agencies shall consult  
11       with each other and prescribe joint regulations pur-  
12       suant to paragraph (1), after consultation with the  
13       State insurance regulators, as appropriate.

14       “(b) SALES PRACTICES.—The regulations prescribed  
15       pursuant to subsection (a) shall include anticoercion rules  
16       applicable to the sale of insurance products which prohibit  
17       an insured depository institution from engaging in any  
18       practice that would lead a consumer to believe an exten-  
19       sion of credit, in violation of section 106(b) of the Bank  
20       Holding Company Act Amendments of 1970, is condi-  
21       tional upon—

22           “(1) the purchase of an insurance product from  
23       the institution or any of its affiliates or subsidiaries;  
24       or

1           “(2) an agreement by the consumer not to ob-  
2           tain, or a prohibition on the consumer from obtain-  
3           ing, an insurance product from an unaffiliated en-  
4           tity.

5           “(c) DISCLOSURES AND ADVERTISING.—The regula-  
6           tions prescribed pursuant to subsection (a) shall include  
7           the following provisions relating to disclosures and adver-  
8           tising in connection with the initial purchase of an insur-  
9           ance product:

10           “(1) DISCLOSURES.—

11                   “(A) IN GENERAL.—Requirements that the  
12                   following disclosures be made orally and in writ-  
13                   ing before the completion of the initial sale and,  
14                   in the case of clause (iv), at the time of applica-  
15                   tion for an extension of credit:

16                           “(i) UNINSURED STATUS.—As appro-  
17                           priate, the product is not insured by the  
18                           Federal Deposit Insurance Corporation,  
19                           the United States Government, or the in-  
20                           sured depository institution.

21                           “(ii) INVESTMENT RISK.—In the case  
22                           of a variable annuity or other insurance  
23                           product which involves an investment risk,  
24                           that there is an investment risk associated

1 with the product, including possible loss of  
2 value.

3 “(iv) COERCION.—The approval of an  
4 extension of credit may not be conditioned  
5 on—

6 “(I) the purchase of an insurance  
7 product from the institution in which  
8 the application for credit is pending or  
9 any of its affiliates or subsidiaries; or

10 “(II) an agreement by the con-  
11 sumer not to obtain, or a prohibition  
12 on the consumer from obtaining, an  
13 insurance product from an unaffili-  
14 ated entity.

15 “(B) MAKING DISCLOSURE READILY UN-  
16 DERSTANDABLE.—Regulations prescribed under  
17 subparagraph (A) shall encourage the use of  
18 disclosure that is conspicuous, simple, direct,  
19 and readily understandable, such as the follow-  
20 ing:

21 “(i) ‘NOT FDIC–INSURED’.

22 “(ii) ‘NOT GUARANTEED BY THE  
23 BANK’.

24 “(iii) ‘MAY GO DOWN IN VALUE’.

1           “(C) ADJUSTMENTS FOR ALTERNATIVE  
2 METHODS OF PURCHASE.—In prescribing the  
3 requirements under subparagraphs (A) and  
4 (D), necessary adjustments shall be made for  
5 purchase in person, by telephone, or by elec-  
6 tronic media to provide for the most appro-  
7 priate and complete form of disclosure and ac-  
8 knowledgments.

9           “(D) CONSUMER ACKNOWLEDGMENT.—A  
10 requirement that an insured depository institu-  
11 tion shall require any person selling an insur-  
12 ance product at any office of, or on behalf of,  
13 the institution to obtain, at the time a con-  
14 sumer receives the disclosures required under  
15 this paragraph or at the time of the initial pur-  
16 chase by the consumer of such product, an ac-  
17 knowledgment by such consumer of the receipt  
18 of the disclosure required under this subsection  
19 with respect to such product.

20           “(2) PROHIBITION ON MISREPRESENTA-  
21 TIONS.—A prohibition on any practice, or any adver-  
22 tising, at any office of, or on behalf of, the insured  
23 depository institution, or any subsidiary as appro-  
24 priate, which could mislead any person or otherwise

1 cause a reasonable person to reach an erroneous be-  
2 lief with respect to—

3 “(A) the uninsured nature of any insur-  
4 ance product sold, or offered for sale, by the in-  
5 stitution or any subsidiary of the institution; or

6 “(B) in the case of a variable annuity or  
7 other insurance product that involves an invest-  
8 ment risk, the investment risk associated with  
9 any such product.

10 “(d) SEPARATION OF BANKING AND NONBANKING  
11 ACTIVITIES.—

12 “(1) REGULATIONS REQUIRED.—The regula-  
13 tions prescribed pursuant to subsection (a) shall in-  
14 clude such provisions as the Federal banking agen-  
15 cies consider appropriate to ensure that the routine  
16 acceptance of deposits and the making of loans is  
17 kept, to the extent practicable, physically segregated  
18 from insurance product activity.

19 “(2) REQUIREMENTS.—Regulations prescribed  
20 pursuant to paragraph (1) shall include the follow-  
21 ing requirements:

22 “(A) SEPARATE SETTING.—A clear delin-  
23 eation of the setting in which, and the cir-  
24 cumstances under which, transactions involving  
25 insurance products should be conducted in a lo-



1 cation physically segregated from an area where  
2 retail deposits are routinely accepted.

3 “(B) REFERRALS.—Standards which per-  
4 mit any person accepting deposits from, or  
5 making loans to, the public in an area where  
6 such transactions are routinely conducted in an  
7 insured depository institution to refer a cus-  
8 tomer who seeks to purchase any insurance  
9 product to a qualified person who sells such  
10 product, only if the person making the referral  
11 receives no more than a one-time nominal fee of  
12 a fixed dollar amount for each referral that  
13 does not depend on whether the referral results  
14 in a transaction.

15 “(C) QUALIFICATION AND LICENSING RE-  
16 QUIREMENTS.—Standards prohibiting any in-  
17 sured depository institution from permitting  
18 any person to sell or offer for sale any insur-  
19 ance product in any part of any office of the in-  
20 stitution, or on behalf of the institution, unless  
21 such person is appropriately qualified and li-  
22 censed.

23 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-  
24 BITION.—

1           “(1) IN GENERAL.—In the case of an applicant  
2           for, or an insured under, any insurance product de-  
3           scribed in paragraph (2), the status of the applicant  
4           or insured as a victim of domestic violence, or as a  
5           provider of services to victims of domestic violence,  
6           shall not be considered as a criterion in any decision  
7           with regard to insurance underwriting, pricing, re-  
8           newal, or scope of coverage of insurance policies, or  
9           payment of insurance claims, except as required or  
10          expressly permitted under State law.

11          “(2) SCOPE OF APPLICATION.—The prohibition  
12          contained in paragraph (1) shall apply to any insur-  
13          ance product which is sold or offered for sale, as  
14          principal, agent, or broker, by any insured deposi-  
15          tory institution or any person who is engaged in  
16          such activities at an office of the institution or on  
17          behalf of the institution.

18          “(3) SENSE OF THE CONGRESS.—It is the sense  
19          of the Congress that, by the end of the 30-month pe-  
20          riod beginning on the date of the enactment of this  
21          Act, the States should enact prohibitions against dis-  
22          crimination with respect to insurance products that  
23          are at least as strict as the prohibitions contained in  
24          paragraph (1).

1           “(4) DOMESTIC VIOLENCE DEFINED.—For pur-  
2           poses of this subsection, the term ‘domestic violence’  
3           means the occurrence of 1 or more of the following  
4           acts by a current or former family member, house-  
5           hold member, intimate partner, or caretaker:

6                   “(A) Attempting to cause or causing or  
7                   threatening another person physical harm, se-  
8                   vere emotional distress, psychological trauma,  
9                   rape, or sexual assault.

10                   “(B) Engaging in a course of conduct or  
11                   repeatedly committing acts toward another per-  
12                   son, including following the person without  
13                   proper authority, under circumstances that  
14                   place the person in reasonable fear of bodily in-  
15                   jury or physical harm.

16                   “(C) Subjecting another person to false  
17                   imprisonment.

18                   “(D) Attempting to cause or cause damage  
19                   to property so as to intimidate or attempt to  
20                   control the behavior of another person.

21           “(f) CONSUMER GRIEVANCE PROCESS.—The Federal  
22           banking agencies shall jointly establish a consumer com-  
23           plaint mechanism, for receiving and expeditiously address-  
24           ing consumer complaints alleging a violation of regulations  
25           issued under the section, which shall—

1           “(1) establish a group within each regulatory  
2 agency to receive such complaints;

3           “(2) develop procedures for investigating such  
4 complaints;

5           “(3) develop procedures for informing consum-  
6 ers of rights they may have in connection with such  
7 complaints; and

8           “(4) develop procedures for addressing concerns  
9 raised by such complaints, as appropriate, including  
10 procedures for the recovery of losses to the extent  
11 appropriate.

12       “(g) EFFECT ON OTHER AUTHORITY.—

13           “(1) IN GENERAL.—No provision of this section  
14 shall be construed as granting, limiting, or otherwise  
15 affecting—

16           “(A) any authority of the Securities and  
17 Exchange Commission, any self-regulatory or-  
18 ganization, the Municipal Securities Rule-  
19 making Board, or the Secretary of the Treasury  
20 under any Federal securities law; or

21           “(B) except as provided in paragraph (2),  
22 any authority of any State insurance commis-  
23 sioner or other State authority under any State  
24 law.

25       “(2) COORDINATION WITH STATE LAW.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), regulations prescribed by a  
3           Federal banking agency under this section shall  
4           not apply to retail sales, solicitations, advertis-  
5           ing, or offers of any insurance product by any  
6           insured depository institution or wholesale fi-  
7           nancial institution or to any person who is en-  
8           gaged in such activities at an office of such in-  
9           stitution or on behalf of the institution, in a  
10          State where the State has in effect statutes,  
11          regulations, orders, or interpretations, that are  
12          inconsistent with or contrary to the regulations  
13          prescribed by the Federal banking agencies.

14          “(B) PREEMPTION.—If, with respect to  
15          any provision of the regulations prescribed  
16          under this section, the Board of Governors of  
17          the Federal Reserve System, the Comptroller of  
18          the Currency, and the Board of Directors of the  
19          Federal Deposit Insurance Corporation deter-  
20          mine jointly that the protection afforded by  
21          such provision for consumers is greater than  
22          the protection provided by a comparable provi-  
23          sion of the statutes, regulations, orders, or in-  
24          terpretations referred to in subparagraph (A) of  
25          any State, such provision of the regulations pre-

1           scribed under this section shall supersede the  
2           comparable provision of such State statute, reg-  
3           ulation, order, or interpretation.

4           “(h) INSURANCE PRODUCT DEFINED.—For purposes  
5 of this section, the term ‘insurance product’ includes an  
6 annuity contract the income of which is subject to tax  
7 treatment under section 72 of the Internal Revenue Code  
8 of 1986.”.

9   **SEC. 309. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
10                   **FOR INSURANCE COMPANIES AND AFFILI-**  
11                   **ATES.**

12       No State may, by law, regulation, order, interpreta-  
13 tion, or otherwise—

14           (1) prevent or significantly interfere with the  
15 ability of any insurer, or any affiliate of an insurer  
16 (whether such affiliate is organized as a stock com-  
17 pany, mutual holding company, or otherwise), to be-  
18 come a financial holding company or to acquire con-  
19 trol of an insured depository institution;

20           (2) limit the amount of an insurer’s assets that  
21 may be invested in the voting securities of an in-  
22 sured depository institution (or any company which  
23 controls such institution), except that the laws of an  
24 insurer’s State of domicile may limit the amount of

1 such investment to an amount that is not less than  
2 5 percent of the insurer's admitted assets; or

3 (3) prevent, significantly interfere with, or have  
4 the authority to review, approve, or disapprove a  
5 plan of reorganization by which an insurer proposes  
6 to reorganize from mutual form to become a stock  
7 insurer (whether as a direct or indirect subsidiary of  
8 a mutual holding company or otherwise) unless such  
9 State is the State of domicile of the insurer.

## 10 **Subtitle B—Redomestication of** 11 **Mutual Insurers**

### 12 **SEC. 311. GENERAL APPLICATION.**

13 This subtitle shall only apply to a mutual insurance  
14 company in a State which has not enacted a law which  
15 expressly establishes reasonable terms and conditions for  
16 a mutual insurance company domiciled in such State to  
17 reorganize into a mutual holding company.

### 18 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

19 (a) REDOMESTICATION.—A mutual insurer organized  
20 under the laws of any State may transfer its domicile to  
21 a transferee domicile as a step in a reorganization in  
22 which, pursuant to the laws of the transferee domicile and  
23 consistent with the standards in subsection (f), the mutual  
24 insurer becomes a stock insurer that is a direct or indirect  
25 subsidiary of a mutual holding company.

1       (b) RESULTING DOMICILE.—Upon complying with  
2 the applicable law of the transferee domicile governing  
3 transfers of domicile and completion of a transfer pursu-  
4 ant to this section, the mutual insurer shall cease to be  
5 a domestic insurer in the transferor domicile and, as a  
6 continuation of its corporate existence, shall be a domestic  
7 insurer of the transferee domicile.

8       (c) LICENSES PRESERVED.—The certificate of au-  
9 thority, agents' appointments and licenses, rates, approv-  
10 als and other items that a licensed State allows and that  
11 are in existence immediately prior to the date that a re-  
12 domesticating insurer transfers its domicile pursuant to  
13 this subtitle shall continue in full force and effect upon  
14 transfer, if the insurer remains duly qualified to transact  
15 the business of insurance in such licensed State.

16       (d) EFFECTIVENESS OF OUTSTANDING POLICIES  
17 AND CONTRACTS.—

18           (1) IN GENERAL.—All outstanding insurance  
19 policies and annuities contracts of a redomesticating  
20 insurer shall remain in full force and effect and need  
21 not be endorsed as to the new domicile of the in-  
22 surer, unless so ordered by the State insurance regu-  
23 lator of a licensed State, and then only in the case  
24 of outstanding policies and contracts whose owners  
25 reside in such licensed State.



1           (2) FORMS.—

2           (A) Applicable State law may require a re-  
3 domesticating insurer to file new policy forms  
4 with the State insurance regulator of a licensed  
5 State on or before the effective date of the  
6 transfer.

7           (B) Notwithstanding subparagraph (A), a  
8 redomesticating insurer may use existing policy  
9 forms with appropriate endorsements to reflect  
10 the new domicile of the redomesticating insurer  
11 until the new policy forms are approved for use  
12 by the State insurance regulator of such li-  
13 censed State.

14       (e) NOTICE.—A redomesticating insurer shall give  
15 notice of the proposed transfer to the State insurance reg-  
16 ulator of each licensed State and shall file promptly any  
17 resulting amendments to corporate documents required to  
18 be filed by a foreign licensed mutual insurer with the in-  
19 surance regulator of each such licensed State.

20       (f) PROCEDURAL REQUIREMENTS.—No mutual in-  
21 surer may redomesticate to another State and reorganize  
22 into a mutual holding company pursuant to this section  
23 unless the State insurance regulator of the transferee  
24 domicile determines that the plan of reorganization of the  
25 insurer includes the following requirements:

1           (1) APPROVAL BY BOARD OF DIRECTORS AND  
2       POLICYHOLDERS.—The reorganization is approved  
3       by at least a majority of the board of directors of  
4       the mutual insurer and at least a majority of the  
5       policyholders who vote after notice, disclosure of the  
6       reorganization and the effects of the transaction on  
7       policyholder contractual rights, and reasonable op-  
8       portunity to vote, in accordance with such notice,  
9       disclosure, and voting procedures as are approved by  
10      the State insurance regulator of the transferee domi-  
11      cile.

12          (2) CONTINUED VOTING CONTROL BY POLICY-  
13      HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—  
14      After the consummation of a reorganization, the pol-  
15      icyholders of the reorganized insurer shall have the  
16      same voting rights with respect to the mutual hold-  
17      ing company as they had before the reorganization  
18      with respect to the mutual insurer. With respect to  
19      an initial public offering of stock, the offering shall  
20      be conducted in compliance with applicable securities  
21      laws and in a manner approved by the State insur-  
22      ance regulator of the transferee domicile.

23          (3) AWARD OF STOCK OR GRANT OF OPTIONS  
24      TO OFFICERS AND DIRECTORS.—For a period of 6  
25      months after completion of an initial public offering,

1       neither a stock holding company nor the converted  
2       insurer shall award any stock options or stock  
3       grants to persons who are elected officers or direc-  
4       tors of the mutual holding company, the stock hold-  
5       ing company, or the converted insurer, except with  
6       respect to any such awards or options to which a  
7       person is entitled as a policyholder and as approved  
8       by the State insurance regulator of the transferee  
9       domicile.

10           (4) CONTRACTUAL RIGHTS.—Upon reorganiza-  
11       tion into a mutual holding company, the contractual  
12       rights of the policyholders are preserved.

13           (5) FAIR AND EQUITABLE TREATMENT OF POL-  
14       ICYHOLDERS.—The reorganization is approved as  
15       fair and equitable to the policyholders by the insur-  
16       ance regulator of the transferee domicile.

17       **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**  
18                               **TICATION.**

19       (a) IN GENERAL.—Unless otherwise permitted by  
20       this subtitle, State laws of any transferor domicile that  
21       conflict with the purposes and intent of this subtitle are  
22       preempted, including but not limited to—

23           (1) any law that has the purpose or effect of  
24       impeding the activities of, taking any action against,  
25       or applying any provision of law or regulation to,

1 any insurer or an affiliate of such insurer because  
2 that insurer or any affiliate plans to redomesticate,  
3 or has redomesticated, pursuant to this subtitle;

4 (2) any law that has the purpose or effect of  
5 impeding the activities of, taking action against, or  
6 applying any provision of law or regulation to, any  
7 insured or any insurance licensee or other inter-  
8 mediary because such person or entity has procured  
9 insurance from or placed insurance with any insurer  
10 or affiliate of such insurer that plans to redomes-  
11 ticate, or has redomesticated, pursuant to this sub-  
12 title, but only to the extent that such law would  
13 treat such insured licensee or other intermediary dif-  
14 ferently than if the person or entity procured insur-  
15 ance from, or placed insurance with, an insured li-  
16 censee or other intermediary which had not redomes-  
17 ticated;

18 (3) any law that has the purpose or effect of  
19 terminating, because of the redomestication of a mu-  
20 tual insurer pursuant to this subtitle, any certificate  
21 of authority, agent appointment or license, rate ap-  
22 proval, or other approval, of any State insurance  
23 regulator or other State authority in existence imme-  
24 diately prior to the redomestication in any State  
25 other than the transferee domicile.

1       (b) DIFFERENTIAL TREATMENT PROHIBITED.—No  
2 State law, regulation, interpretation, or functional equiva-  
3 lent thereof, of a State other than a transferee domicile  
4 may treat a redomesticating or redomesticated insurer or  
5 any affiliate thereof any differently than an insurer oper-  
6 ating in that State that is not a redomesticating or re-  
7 domesticated insurer.

8       (c) LAWS PROHIBITING OPERATIONS.—If any li-  
9 censed State fails to issue, delays the issuance of, or seeks  
10 to revoke an original or renewal certificate of authority  
11 of a redomesticated insurer immediately following re-  
12 domestication, except on grounds and in a manner consist-  
13 ent with its past practices regarding the issuance of cer-  
14 tificates of authority to foreign insurers that are not re-  
15 domesticating, then the redomesticating insurer shall be  
16 exempt from any State law of the licensed State to the  
17 extent that such State law or the operation of such State  
18 law would make unlawful, or regulate, directly or indi-  
19 rectly, the operation of the redomesticated insurer, except  
20 that such licensed State may require the redomesticated  
21 insurer to—

22           (1) comply with the unfair claim settlement  
23 practices law of the licensed State;

24           (2) pay, on a nondiscriminatory basis, applica-  
25 ble premium and other taxes which are levied on li-

1       censed insurers or policyholders under the laws of  
2       the licensed State;

3           (3) register with and designate the State insur-  
4       ance regulator as its agent solely for the purpose of  
5       receiving service of legal documents or process;

6           (4) submit to an examination by the State in-  
7       surance regulator in any licensed state in which the  
8       redomesticated insurer is doing business to deter-  
9       mine the insurer's financial condition, if—

10           (A) the State insurance regulator of the  
11       transferee domicile has not begun an examina-  
12       tion of the redomesticated insurer and has not  
13       scheduled such an examination to begin before  
14       the end of the 1-year period beginning on the  
15       date of the redomestication; and

16           (B) any such examination is coordinated to  
17       avoid unjustified duplication and repetition;

18       (5) comply with a lawful order issued in—

19           (A) a delinquency proceeding commenced  
20       by the State insurance regulator of any licensed  
21       State if there has been a judicial finding of fi-  
22       nancial impairment under paragraph (7); or

23           (B) a voluntary dissolution proceeding;

24       (6) comply with any State law regarding decep-  
25       tive, false, or fraudulent acts or practices, except

1       that if the licensed State seeks an injunction regard-  
2       ing the conduct described in this paragraph, such in-  
3       junction must be obtained from a court of competent  
4       jurisdiction as provided in section 314(a);

5           (7) comply with an injunction issued by a court  
6       of competent jurisdiction, upon a petition by the  
7       State insurance regulator alleging that the redomes-  
8       ticating insurer is in hazardous financial condition  
9       or is financially impaired;

10          (8) participate in any insurance insolvency  
11       guaranty association on the same basis as any other  
12       insurer licensed in the licensed State; and

13          (9) require a person acting, or offering to act,  
14       as an insurance licensee for a redomesticated insurer  
15       in the licensed State to obtain a license from that  
16       State, except that such State may not impose any  
17       qualification or requirement that discriminates  
18       against a nonresident insurance licensee.

19   **SEC. 314. OTHER PROVISIONS.**

20          (a) JUDICIAL REVIEW.—The appropriate United  
21       States district court shall have exclusive jurisdiction over  
22       litigation arising under this section involving any redomes-  
23       ticating or redomesticated insurer.

24          (b) SEVERABILITY.—If any provision of this section,  
25       or the application thereof to any person or circumstances,

1 is held invalid, the remainder of the section, and the appli-  
2 cation of such provision to other persons or circumstances,  
3 shall not be affected thereby.

4 **SEC. 315. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions  
6 shall apply:

7 (1) COURT OF COMPETENT JURISDICTION.—

8 The term “court of competent jurisdiction” means a  
9 court authorized pursuant to section 314(a) to adju-  
10 dicate litigation arising under this subtitle.

11 (2) DOMICILE.—The term “domicile” means  
12 the State in which an insurer is incorporated, char-  
13 tered, or organized.

14 (3) INSURANCE LICENSEE.—The term “insur-  
15 ance licensee” means any person holding a license  
16 under State law to act as insurance agent, subagent,  
17 broker, or consultant.

18 (4) INSTITUTION.—The term “institution”  
19 means a corporation, joint stock company, limited li-  
20 ability company, limited liability partnership, asso-  
21 ciation, trust, partnership, or any similar entity.

22 (5) LICENSED STATE.—The term “licensed  
23 State” means any State, the District of Columbia,  
24 American Samoa, Guam, Puerto Rico, or the United  
25 States Virgin Islands in which the redomesticating



1 insurer has a certificate of authority in effect imme-  
2 diately prior to the redomestication.

3 (6) MUTUAL INSURER.—The term “mutual in-  
4 surer” means a mutual insurer organized under the  
5 laws of any State.

6 (7) PERSON.—The term “person” means an in-  
7 dividual, institution, government or governmental  
8 agency, State or political subdivision of a State, pub-  
9 lic corporation, board, association, estate, trustee, or  
10 fiduciary, or other similar entity.

11 (8) POLICYHOLDER.—The term “policyholder”  
12 means the owner of a policy issued by a mutual in-  
13 surer, except that, with respect to voting rights, the  
14 term means a member of a mutual insurer or mu-  
15 tual holding company granted the right to vote, as  
16 determined under applicable State law.

17 (9) REDOMESTICATED INSURER.—The term  
18 “redomesticated insurer” means a mutual insurer  
19 that has redomesticated pursuant to this subtitle.

20 (10) REDOMESTICATING INSURER.—The term  
21 “redomesticating insurer” means a mutual insurer  
22 that is redomesticating pursuant to this subtitle.

23 (11) REDOMESTICATION OR TRANSFER.—The  
24 terms “redomestication” and “transfer” mean the

1 transfer of the domicile of a mutual insurer from  
2 one State to another State pursuant to this subtitle.

3 (12) STATE INSURANCE REGULATOR.—The  
4 term “State insurance regulator” means the prin-  
5 cipal insurance regulatory authority of a State, the  
6 District of Columbia, American Samoa, Guam,  
7 Puerto Rico, or the United States Virgin Islands.

8 (13) STATE LAW.—The term “State law”  
9 means the statutes of any State, the District of Co-  
10 lumbia, American Samoa, Guam, Puerto Rico, or the  
11 United States Virgin Islands and any regulation,  
12 order, or requirement prescribed pursuant to any  
13 such statute.

14 (14) TRANSFEREE DOMICILE.—The term  
15 “transferee domicile” means the State to which a  
16 mutual insurer is redomesticating pursuant to this  
17 subtitle.

18 (15) TRANSFEROR DOMICILE.—The term  
19 “transferor domicile” means the State from which a  
20 mutual insurer is redomesticating pursuant to this  
21 subtitle.

22 **SEC. 316. EFFECTIVE DATE.**

23 This subtitle shall take effect on the date of the en-  
24 actment of this Act.

1 **Subtitle C—National Association of**  
2 **Registered Agents and Brokers**

3 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**  
4 **REFORMS.**

5 (a) IN GENERAL.—The provisions of this subtitle  
6 shall take effect unless by the end of the 3-year period  
7 beginning on the date of the enactment of this Act at least  
8 a majority of the States—

9 (1) have enacted uniform laws and regulations  
10 governing the licensure of individuals and entities  
11 authorized to sell and solicit the purchase of insur-  
12 ance within the State; or

13 (2) have enacted reciprocity laws and regula-  
14 tions governing the licensure of nonresident individ-  
15 uals and entities authorized to sell and solicit insur-  
16 ance within those States.

17 (b) UNIFORMITY REQUIRED.—States shall be deemed  
18 to have established the uniformity necessary to satisfy  
19 subsection (a)(1) if the States—

20 (1) establish uniform criteria regarding the in-  
21 tegrity, personal qualifications, education, training,  
22 and experience of licensed insurance producers, in-  
23 cluding the qualification and training of sales per-  
24 sonnel in ascertaining the appropriateness of a par-  
25 ticular insurance product for a prospective customer;

1           (2) establish uniform continuing education re-  
2           quirements for licensed insurance producers;

3           (3) establish uniform ethics course require-  
4           ments for licensed insurance producers in conjunc-  
5           tion with the continuing education requirements  
6           under paragraph (2);

7           (4) establish uniform criteria to ensure that an  
8           insurance product, including any annuity contract,  
9           sold to a consumer is suitable and appropriate for  
10          the consumer based on financial information dis-  
11          closed by the consumer; and

12          (5) do not impose any requirement upon any in-  
13          surance producer to be licensed or otherwise quali-  
14          fied to do business as a nonresident that has the ef-  
15          fect of limiting or conditioning that producer's ac-  
16          tivities because of its residence or place of oper-  
17          ations, except that counter-signature requirements  
18          imposed on nonresident producers shall not be  
19          deemed to have the effect of limiting or conditioning  
20          a producer's activities because of its residence or  
21          place of operations under this section.

22          (c) RECIPROCITY REQUIRED.—States shall be  
23          deemed to have established the reciprocity required to sat-  
24          isfy subsection (a)(2) if the following conditions are met:

1           (1)   ADMINISTRATIVE    LICENSING    PROCE-  
2           DURES.—At least a majority of the States permit a  
3           producer that has a resident license for selling or so-  
4           liciting the purchase of insurance in its home State  
5           to receive a license to sell or solicit the purchase of  
6           insurance in such majority of States as a non-  
7           resident to the same extent such producer is per-  
8           mitted to sell or solicit the purchase of insurance in  
9           its State, without satisfying any additional require-  
10          ments other than submitting—

11                   (A) a request for licensure;

12                   (B) the application for licensure that the  
13           producer submitted to its home State;

14                   (C) proof that the producer is licensed and  
15           in good standing in its home State; and

16                   (D) the payment of any requisite fee to the  
17           appropriate authority,

18           if the producer's home State also awards such li-  
19           censes on such a reciprocal basis.

20          (2)   CONTINUING    EDUCATION    REQUIRE-  
21          MENTS.—A majority of the States accept an insur-  
22          ance producer's satisfaction of its home State's con-  
23          tinuing education requirements for licensed insur-  
24          ance producers to satisfy the States' own continuing  
25          education requirements if the producer's home State

1 also recognizes the satisfaction of continuing edu-  
2 cation requirements on such a reciprocal basis.

3 (3) NO LIMITING NONRESIDENT REQUIRE-  
4 MENTS.—A majority of the States do not impose  
5 any requirement upon any insurance producer to be  
6 licensed or otherwise qualified to do business as a  
7 nonresident that has the effect of limiting or condi-  
8 tioning that producer's activities because of its resi-  
9 dence or place of operations, except that  
10 countersignature requirements imposed on non-  
11 resident producers shall not be deemed to have the  
12 effect of limiting or conditioning a producer's activi-  
13 ties because of its residence or place of operations  
14 under this section.

15 (4) RECIPROCAL RECIPROCITY.—Each of the  
16 States that satisfies paragraphs (1), (2), and (3)  
17 grants reciprocity to residents of all of the other  
18 States that satisfy such paragraphs.

19 (d) DETERMINATION.—

20 (1) NAIC DETERMINATION.—At the end of the  
21 3-year period beginning on the date of the enact-  
22 ment of this Act, the National Association of Insur-  
23 ance Commissioners shall determine, in consultation  
24 with the insurance commissioners or chief insurance  
25 regulatory officials of the States, whether the uni-

1       formity or reciprocity required by subsections (b)  
2       and (c) has been achieved.

3           (2) JUDICIAL REVIEW.—The appropriate  
4       United States district court shall have exclusive ju-  
5       risdiction over any challenge to the National Asso-  
6       ciation of Insurance Commissioners' determination  
7       under this section and such court shall apply the  
8       standards set forth in section 706 of title 5, United  
9       States Code, when reviewing any such challenge.

10       (e) CONTINUED APPLICATION.—If, at any time, the  
11      uniformity or reciprocity required by subsections (b) and  
12      (c) no longer exists, the provisions of this subtitle shall  
13      take effect within 2 years, unless the uniformity or reci-  
14      procity required by those provisions is satisfied before the  
15      expiration of that 2-year period.

16       (f) SAVINGS PROVISION.—No provision of this sec-  
17      tion shall be construed as requiring that any law, regula-  
18      tion, provision, or action of any State which purports to  
19      regulate insurance producers, including any such law, reg-  
20      ulation, provision, or action which purports to regulate un-  
21      fair trade practices or establish consumer protections, in-  
22      cluding countersignature laws, be altered or amended in  
23      order to satisfy the uniformity or reciprocity required by  
24      subsections (b) and (c), unless any such law, regulation,  
25      provision, or action is inconsistent with a specific require-

1 ment of any such subsection and then only to the extent  
2 of such inconsistency.

3 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**  
4 **AGENTS AND BROKERS.**

5 (a) ESTABLISHMENT.—There is established the Na-  
6 tional Association of Registered Agents and Brokers  
7 (hereafter in this subtitle referred to as the “Associa-  
8 tion”).

9 (b) STATUS.—The Association shall—

10 (1) be a nonprofit corporation;

11 (2) have succession until dissolved by an Act of  
12 Congress;

13 (3) not be an agency or establishment of the  
14 United States Government; and

15 (4) except as otherwise provided in this Act, be  
16 subject to, and have all the powers conferred upon  
17 a nonprofit corporation by the District of Columbia  
18 Nonprofit Corporation Act (D.C. Code, sec. 29y-  
19 1001 et seq.).

20 **SEC. 323. PURPOSE.**

21 The purpose of the Association shall be to provide  
22 a mechanism through which uniform licensing, appoint-  
23 ment, continuing education, and other insurance producer  
24 sales qualification requirements and conditions can be  
25 adopted and applied on a multistate basis, while preserv-



1 ing the right of States to license, supervise, and discipline  
2 insurance producers and to prescribe and enforce laws and  
3 regulations with regard to insurance-related consumer  
4 protection and unfair trade practices.

5 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

6 The Association shall be subject to the supervision  
7 and oversight of the National Association of Insurance  
8 Commissioners (hereafter in this subtitle referred to as the  
9 “NAIC”) and shall not be an agency or an instrumentality  
10 of the United States Government.

11 **SEC. 325. MEMBERSHIP.**

12 (a) ELIGIBILITY.—

13 (1) IN GENERAL.—Any State-licensed insurance  
14 producer shall be eligible to become a member in the  
15 Association.

16 (2) INELIGIBILITY FOR SUSPENSION OR REV-  
17 OCATION OF LICENSE.—Notwithstanding paragraph  
18 (1), a State-licensed insurance producer shall not be  
19 eligible to become a member if a State insurance  
20 regulator has suspended or revoked such producer’s  
21 license in that State during the 3-year preceding the  
22 date such producer applies for membership.

23 (3) RESUMPTION OF ELIGIBILITY.—Paragraph  
24 (2) shall cease to apply to any insurance producer  
25 if—

1 (A) the State insurance regulator renews  
2 the license of such producer in the State in  
3 which the license was suspended or revoked; or

4 (B) the suspension or revocation is subse-  
5 quently overturned.

6 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-  
7 TERIA.—The Association shall have the authority to estab-  
8 lish membership criteria that—

9 (1) bear a reasonable relationship to the pur-  
10 poses for which the Association was established; and

11 (2) do not unfairly limit the access of smaller  
12 agencies to the Association membership.

13 (c) ESTABLISHMENT OF CLASSES AND CAT-  
14 EGORIES.—

15 (1) CLASSES OF MEMBERSHIP.—The Associa-  
16 tion may establish separate classes of membership,  
17 with separate criteria, if the Association reasonably  
18 determines that performance of different duties re-  
19 quires different levels of education, training, or expe-  
20 rience.

21 (2) CATEGORIES.—The Association may estab-  
22 lish separate categories of membership for individ-  
23 uals and for other persons. The establishment of any  
24 such categories of membership shall be based either  
25 on the types of licensing categories that exist under

1 State laws or on the aggregate amount of business  
2 handled by an insurance producer. No special cat-  
3 egories of membership, and no distinct membership  
4 criteria, shall be established for members which are  
5 insured depository institutions or wholesale financial  
6 institutions or for their employees, agents, or affili-  
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-  
10 lish criteria for membership which shall include  
11 standards for integrity, personal qualifications, edu-  
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-  
14 teria under paragraph (1), the Association shall con-  
15 sider the highest levels of insurance producer quali-  
16 fications established under the licensing laws of the  
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the  
19 Association shall entitle the member to licensure in each  
20 State for which the member pays the requisite fees, includ-  
21 ing licensing fees and, where applicable, bonding require-  
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-  
24 tion shall be renewed on an annual basis.

1 (g) CONTINUING EDUCATION.—The Association shall  
2 establish, as a condition of membership, continuing edu-  
3 cation requirements which shall be comparable to or great-  
4 er than the continuing education requirements under the  
5 licensing laws of a majority of the States.

6 (h) SUSPENSION AND REVOCATION.—The Associa-  
7 tion may—

8 (1) inspect and examine the records and offices  
9 of the members of the Association to determine com-  
10 pliance with the criteria for membership established  
11 by the Association; and

12 (2) suspend or revoke the membership of an in-  
13 surance producer if—

14 (A) the producer fails to meet the applica-  
15 ble membership criteria of the Association; or

16 (B) the producer has been subject to dis-  
17 ciplinary action pursuant to a final adjudicatory  
18 proceeding under the jurisdiction of a State in-  
19 surance regulator, and the Association con-  
20 cludes that retention of membership in the As-  
21 sociation would not be in the public interest.

22 (i) OFFICE OF CONSUMER COMPLAINTS.—

23 (1) IN GENERAL.—The Association shall estab-  
24 lish an office of consumer complaints that shall—

1           (A) receive and investigate complaints  
2           from both consumers and State insurance regu-  
3           lators related to members of the Association;  
4           and

5           (B) recommend to the Association any dis-  
6           ciplinary actions that the office considers appro-  
7           priate, to the extent that any such rec-  
8           ommendation is not inconsistent with State law.

9           (2) RECORDS AND REFERRALS.—The office of  
10          consumer complaints of the Association shall—

11          (A) maintain records of all complaints re-  
12          ceived in accordance with paragraph (1) and  
13          make such records available to the NAIC and  
14          to each State insurance regulator for the State  
15          of residence of the consumer who filed the com-  
16          plaint; and

17          (B) refer, when appropriate, any such com-  
18          plaint to any appropriate State insurance regu-  
19          lator.

20          (3) TELEPHONE AND OTHER ACCESS.—The of-  
21          fice of consumer complaints shall maintain a toll-free  
22          telephone number for the purpose of this subsection  
23          and, as practicable, other alternative means of com-  
24          munication with consumers, such as an Internet  
25          home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) ESTABLISHMENT.—There is established the  
3 board of directors of the Association (hereafter in this sub-  
4 title referred to as the “Board”) for the purpose of govern-  
5 ing and supervising the activities of the Association and  
6 the members of the Association.

7 (b) POWERS.—The Board shall have such powers and  
8 authority as may be specified in the bylaws of the Associa-  
9 tion.

10 (c) COMPOSITION.—

11 (1) MEMBERS.—The Board shall be composed  
12 of 7 members appointed by the NAIC.

13 (2) REQUIREMENT.—At least 4 of the members  
14 of the Board shall have significant experience with  
15 the regulation of commercial lines of insurance in at  
16 least 1 of the 20 States in which the greatest total  
17 dollar amount of commercial-lines insurance is  
18 placed in the United States.

19 (3) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—If, by the end of the 2-  
21 year period beginning on the date of the enact-  
22 ment of this Act, the NAIC has not appointed  
23 the initial 7 members of the Board of the Asso-  
24 ciation, the initial Board shall consist of the 7  
25 State insurance regulators of the 7 States with  
26 the greatest total dollar amount of commercial-

1 lines insurance in place as of the end of such  
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of  
4 the State insurance regulators described in sub-  
5 paragraph (A) declines to serve on the Board,  
6 the State insurance regulator with the next  
7 greatest total dollar amount of commercial-lines  
8 insurance in place, as determined by the NAIC  
9 as of the end of such period, shall serve as a  
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7  
12 State insurance regulators accept appointment  
13 to the Board, the Association shall be estab-  
14 lished without NAIC oversight pursuant to sec-  
15 tion 332.

16 (d) TERMS.—The term of each director shall, after  
17 the initial appointment of the members of the Board, be  
18 for 3 years, with  $\frac{1}{3}$  of the directors to be appointed each  
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board  
21 shall be filled in the same manner as the original appoint-  
22 ment of the initial Board for the remainder of the term  
23 of the vacating member.

1 (f) MEETINGS.—The Board shall meet at the call of  
2 the chairperson, or as otherwise provided by the bylaws  
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association  
7 shall consist of a chairperson and a vice chairperson  
8 of the Board, a president, secretary, and treasurer  
9 of the Association, and such other officers and as-  
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of  
12 the Board and the Association shall be elected or ap-  
13 pointed at such time and in such manner and for  
14 such terms not exceeding 3 years as may be pre-  
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.— Only individuals  
17 who are members of the National Association of Insurance  
18 Commissioners shall be eligible to serve as the chairperson  
19 of the board of directors.

20 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

21 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

22 (1) COPY REQUIRED TO BE FILED WITH THE  
23 NAIC.—The board of directors of the Association  
24 shall file with the NAIC a copy of the proposed by-  
25 laws or any proposed amendment to the bylaws, ac-



1        accompanied by a concise general statement of the  
2        basis and purpose of such proposal.

3            (2) EFFECTIVE DATE.—Except as provided in  
4        paragraph (3), any proposed bylaw or proposed  
5        amendment shall take effect—

6            (A) 30 days after the date of the filing of  
7        a copy with the NAIC;

8            (B) upon such later date as the Associa-  
9        tion may designate; or

10          (C) such earlier date as the NAIC may de-  
11        termine.

12          (3) DISAPPROVAL BY THE NAIC.—Notwith-  
13        standing paragraph (2), a proposed bylaw or amend-  
14        ment shall not take effect if, after public notice and  
15        opportunity to participate in a public hearing—

16          (A) the NAIC disapproves such proposal as  
17        being contrary to the public interest or contrary  
18        to the purposes of this subtitle and provides no-  
19        tice to the Association setting forth the reasons  
20        for such disapproval; or

21          (B) the NAIC finds that such proposal in-  
22        volves a matter of such significant public inter-  
23        est that public comment should be obtained, in  
24        which case it may, after notifying the Associa-  
25        tion in writing of such finding, require that the

1 procedures set forth in subsection (b) be fol-  
2 lowed with respect to such proposal, in the  
3 same manner as if such proposed bylaw change  
4 were a proposed rule change within the mean-  
5 ing of such paragraph.

6 (b) ADOPTION AND AMENDMENT OF RULES.—

7 (1) FILING PROPOSED REGULATIONS WITH THE  
8 NAIC.—

9 (A) IN GENERAL.—The board of directors  
10 of the Association shall file with the NAIC a  
11 copy of any proposed rule or any proposed  
12 amendment to a rule of the Association which  
13 shall be accompanied by a concise general state-  
14 ment of the basis and purpose of such proposal.

15 (B) OTHER RULES AND AMENDMENTS IN-  
16 EFFECTIVE.—No proposed rule or amendment  
17 shall take effect unless approved by the NAIC  
18 or otherwise permitted in accordance with this  
19 paragraph.

20 (2) INITIAL CONSIDERATION BY THE NAIC.—

21 Within 35 days after the date of publication of no-  
22 tice of filing of a proposal, or before the end of such  
23 longer period not to exceed 90 days as the NAIC  
24 may designate after such date if the NAIC finds  
25 such longer period to be appropriate and sets forth

1 its reasons for so finding, or as to which the Asso-  
2 ciation consents, the NAIC shall—

3 (A) by order approve such proposed rule or  
4 amendment; or

5 (B) institute proceedings to determine  
6 whether such proposed rule or amendment  
7 should be modified or disapproved.

8 (3) NAIC PROCEEDINGS.—

9 (A) IN GENERAL.—Proceedings instituted  
10 by the NAIC with respect to a proposed rule or  
11 amendment pursuant to paragraph (2) shall—

12 (i) include notice of the grounds for  
13 disapproval under consideration;

14 (ii) provide opportunity for hearing;  
15 and

16 (iii) be concluded within 180 days  
17 after the date of the Association's filing of  
18 such proposed rule or amendment.

19 (B) DISPOSITION OF PROPOSAL.—At the  
20 conclusion of any proceeding under subpara-  
21 graph (A), the NAIC shall, by order, approve or  
22 disapprove the proposed rule or amendment.

23 (C) EXTENSION OF TIME FOR CONSIDER-  
24 ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the  
4 NAIC finds good cause for such extension  
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which  
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC  
10 shall approve a proposed rule or amendment if  
11 the NAIC finds that the rule or amendment is  
12 in the public interest and is consistent with the  
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE  
15 PERIOD.—The NAIC shall not approve any pro-  
16 posed rule before the end of the 30-day period  
17 beginning on the date the Association files pro-  
18 posed rules or amendments in accordance with  
19 paragraph (1) unless the NAIC finds good  
20 cause for so doing and sets forth the reasons  
21 for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any  
24 provision of this subsection other than subpara-  
25 graph (B), a proposed rule or amendment relat-

1 ing to the administration or organization of the  
2 Association may take effect—

3 (i) upon the date of filing with the  
4 NAIC, if such proposed rule or amendment  
5 is designated by the Association as relating  
6 solely to matters which the NAIC, consist-  
7 ent with the public interest and the pur-  
8 poses of this subsection, determines by rule  
9 do not require the procedures set forth in  
10 this paragraph; or

11 (ii) upon such date as the NAIC shall  
12 for good cause determine.

13 (B) ABROGATION BY THE NAIC.—

14 (i) IN GENERAL.—At any time within  
15 60 days after the date of filing of any pro-  
16 posed rule or amendment under subpara-  
17 graph (A)(i) or (B)(ii), the NAIC may re-  
18 peal such rule or amendment and require  
19 that the rule or amendment be refiled and  
20 reviewed in accordance with this para-  
21 graph, if the NAIC finds that such action  
22 is necessary or appropriate in the public  
23 interest, for the protection of insurance  
24 producers or policyholders, or otherwise in  
25 furtherance of the purposes of this subtitle.

1 (ii) EFFECT OF RECONSIDERATION BY  
2 THE NAIC.—Any action of the NAIC pur-  
3 suant to clause (i) shall—

4 (I) not affect the validity or force  
5 of a rule change during the period  
6 such rule or amendment was in effect;  
7 and

8 (II) not be considered to be final  
9 action.

10 (c) ACTION REQUIRED BY THE NAIC.—The NAIC  
11 may, in accordance with such rules as the NAIC deter-  
12 mines to be necessary or appropriate to the public interest  
13 or to carry out the purposes of this subtitle, require the  
14 Association to adopt, amend, or repeal any bylaw, rule or  
15 amendment of the Association, whenever adopted.

16 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

17 (1) SPECIFICATION OF CHARGES.—In any pro-  
18 ceeding to determine whether membership shall be  
19 denied, suspended, revoked, and not renewed (here-  
20 after in this section referred to as a “disciplinary ac-  
21 tion”), the Association shall bring specific charges,  
22 notify such member of such charges and give the  
23 member an opportunity to defend against the  
24 charges, and keep a record.

1           (2) SUPPORTING STATEMENT.—A determina-  
2           tion to take disciplinary action shall be supported by  
3           a statement setting forth—

4                   (A) any act or practice in which such  
5           member has been found to have been engaged;

6                   (B) the specific provision of this subtitle,  
7           the rules or regulations under this subtitle, or  
8           the rules of the Association which any such act  
9           or practice is deemed to violate; and

10                  (C) the sanction imposed and the reason  
11           for such sanction.

12       (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

13           (1) NOTICE TO THE NAIC.—If the Association  
14           orders any disciplinary action, the Association shall  
15           promptly notify the NAIC of such action.

16           (2) REVIEW BY THE NAIC.—Any disciplinary  
17           action taken by the Association shall be subject to  
18           review by the NAIC—

19                   (A) on the NAIC's own motion; or

20                   (B) upon application by any person ag-  
21           grieved by such action if such application is  
22           filed with the NAIC not more than 30 days  
23           after the later of—

24                   (i) the date the notice was filed with  
25           the NAIC pursuant to paragraph (1); or

1                   (ii) the date the notice of the discipli-  
2                   nary action was received by such aggrieved  
3                   person.

4       (f) EFFECT OF REVIEW.—The filing of an applica-  
5       tion to the NAIC for review of a disciplinary action, or  
6       the institution of review by the NAIC on the NAIC's own  
7       motion, shall not operate as a stay of disciplinary action  
8       unless the NAIC otherwise orders.

9       (g) SCOPE OF REVIEW.—

10           (A) IN GENERAL.—In any proceeding to  
11           review such action, after notice and the oppor-  
12           tunity for hearing, the NAIC shall—

13                   (i) determine whether the action  
14                   should be taken;

15                   (ii) affirm, modify, or rescind the dis-  
16                   ciplinary sanction; or

17                   (iii) remand to the Association for  
18                   further proceedings.

19       (B) DISMISSAL OF REVIEW.—The NAIC  
20       may dismiss a proceeding to review disciplinary  
21       action if the NAIC finds that—

22                   (i) the specific grounds on which the  
23                   action is based exist in fact;

24                   (ii) the action is in accordance with  
25                   applicable rules and regulations; and



1 (iii) such rules and regulations are,  
2 and were, applied in a manner consistent  
3 with the purposes of this Act.

4 **SEC. 329. ASSESSMENTS.**

5 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-  
6 MENT.—The Association may establish such application  
7 and membership fees as the Association finds necessary  
8 to cover the costs of its operations, including fees made  
9 reimbursable to the NAIC under subsection (b), except  
10 that, in setting such fees, the Association may not dis-  
11 criminate against smaller insurance producers.

12 (b) NAIC ASSESSMENTS.—The NAIC may assess the  
13 Association for any costs it incurs under this subtitle.

14 **SEC. 330. FUNCTIONS OF THE NAIC.**

15 (a) ADMINISTRATIVE PROCEDURE.—Determinations  
16 of the NAIC, for purposes of making rules pursuant to  
17 section 328, shall be made after appropriate notice and  
18 opportunity for a hearing and for submission of views of  
19 interested persons.

20 (b) EXAMINATIONS AND REPORTS.—

21 (1) The NAIC may make such examinations  
22 and inspections of the Association and require the  
23 Association to furnish it with such reports and  
24 records or copies thereof as the NAIC may consider

1       necessary or appropriate in the public interest or to  
2       effectuate the purposes of this subtitle.

3           (2) As soon as practicable after the close of  
4       each fiscal year, the Association shall submit to the  
5       NAIC a written report regarding the conduct of its  
6       business, and the exercise of the other rights and  
7       powers granted by this subtitle, during such fiscal  
8       year. Such report shall include financial statements  
9       setting forth the financial position of the Association  
10      at the end of such fiscal year and the results of its  
11      operations (including the source and application of  
12      its funds) for such fiscal year. The NAIC shall  
13      transmit such report to the President and the Con-  
14      gress with such comment thereon as the NAIC de-  
15      termines to be appropriate.

16 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**  
17 **TORS, OFFICERS, AND EMPLOYEES OF THE**  
18 **ASSOCIATION.**

19       (a) IN GENERAL.—The Association shall not be  
20      deemed to be an insurer or insurance producer within the  
21      meaning of any State law, rule, regulation, or order regu-  
22      lating or taxing insurers, insurance producers, or other en-  
23      tities engaged in the business of insurance, including pro-  
24      visions imposing premium taxes, regulating insurer sol-  
25      vency or financial condition, establishing guaranty funds

1 and levying assessments, or requiring claims settlement  
2 practices.

3 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-  
4 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-  
5 tion nor any of its directors, officers, or employees shall  
6 have any liability to any person for any action taken or  
7 omitted in good faith under or in connection with any mat-  
8 ter subject to this subtitle.

9 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

10 (a) IN GENERAL.—The Association shall be estab-  
11 lished without NAIC oversight and the provisions set forth  
12 in section 324, subsections (a), (b), (c), and (e) of section  
13 328, and sections 329(b) and 330 of this subtitle shall  
14 cease to be effective if, at the end of the 2-year period  
15 after the date on which the provisions of this subtitle take  
16 effect pursuant to section 321—

17 (1) at least a majority of the States represent-  
18 ing at least 50 percent of the total United States  
19 commercial-lines insurance premiums have not satis-  
20 fied the uniformity or reciprocity requirements of  
21 subsections (a) and (b) of section 321; and

22 (2) the NAIC has not approved the Associa-  
23 tion's bylaws as required by section 328, the NAIC  
24 is unable to operate or supervise the Association, or

1 the Association is not conducting its activities as re-  
2 quired under this Act.

3 (b) BOARD APPOINTMENTS.—If the repeals required  
4 by subsection (a) are implemented—

5 (1) GENERAL APPOINTMENT POWER.—The  
6 President, with the advice and consent of the United  
7 States Senate, shall appoint the members of the As-  
8 sociation’s Board established under section 326 from  
9 lists of candidates recommended to the President by  
10 the National Association of Insurance Commis-  
11 sioners.

12 (2) PROCEDURES FOR OBTAINING NATIONAL  
13 ASSOCIATION OF INSURANCE COMMISSIONERS AP-  
14 POINTMENT RECOMMENDATIONS.—

15 (A) INITIAL DETERMINATION AND REC-  
16 OMMENDATIONS.—After the date on which the  
17 provisions of part a of this section take effect,  
18 then the National Association of Insurance  
19 Commissioners shall have 60 days to provide a  
20 list of recommended candidates to the Presi-  
21 dent. If the National Association of Insurance  
22 Commissioners fails to provide a list by that  
23 date, or if any list that is provided does not in-  
24 clude at least 14 recommended candidates or  
25 comply with the requirements of section 326(c),

1 the President shall, with the advice and consent  
2 of the United States Senate, make the requisite  
3 appointments without considering the views of  
4 the NAIC.

5 (B) SUBSEQUENT APPOINTMENTS.—After  
6 the initial appointments, the National Associa-  
7 tion of Insurance Commissioners shall provide a  
8 list of at least 6 recommended candidates for  
9 the Board to the President by January 15 of  
10 each subsequent year. If the National Associa-  
11 tion of Insurance Commissioners fails to pro-  
12 vide a list by that date, or if any list that is  
13 provided does not include at least 6 rec-  
14 ommended candidates or comply with the re-  
15 quirements of section 326(c), the President,  
16 with the advice and consent of the Senate, shall  
17 make the requisite appointments without con-  
18 sidering the views of the NAIC.

19 (C) PRESIDENTIAL OVERSIGHT.—

20 (i) REMOVAL.—If the President deter-  
21 mines that the Association is not acting in  
22 the interests of the public, the President  
23 may remove the entire existing Board for  
24 the remainder of the term to which the  
25 members of the Board were appointed and

1 appoint, with the advice and consent of the  
2 Senate, new members to fill the vacancies  
3 on the Board for the remainder of such  
4 terms.

5 (ii) SUSPENSION OF RULES OR AC-  
6 TIONS.—The President, or a person des-  
7 ignated by the President for such purpose,  
8 may suspend the effectiveness of any rule,  
9 or prohibit any action, of the Association  
10 which the President or the designee deter-  
11 mines is contrary to the public interest.

12 (d) ANNUAL REPORT.—As soon as practicable after  
13 the close of each fiscal year, the Association shall submit  
14 to the President and to Congress a written report relative  
15 to the conduct of its business, and the exercise of the other  
16 rights and powers granted by this subtitle, during such  
17 fiscal year. Such report shall include financial statements  
18 setting forth the financial position of the Association at  
19 the end of such fiscal year and the results of its operations  
20 (including the source and application of its funds) for such  
21 fiscal year.

22 **SEC. 333. RELATIONSHIP TO STATE LAW.**

23 (a) PREEMPTION OF STATE LAWS.—State laws, reg-  
24 ulations, provisions, or actions purporting to regulate in-

1 insurance producers shall be preempted in the following in-  
2 stances:

3 (1) No State shall impede the activities of, take  
4 any action against, or apply any provision of law or  
5 regulation to, any insurance producer because that  
6 insurance producer or any affiliate plans to become,  
7 has applied to become, or is a member of the Asso-  
8 ciation.

9 (2) No State shall impose any requirement  
10 upon a member of the Association that it pay dif-  
11 ferent fees to be licensed or otherwise qualified to do  
12 business in that State, including bonding require-  
13 ments, based on its residency.

14 (3) No State shall impose any licensing, ap-  
15 pointment, integrity, personal or corporate qualifica-  
16 tions, education, training, experience, residency, or  
17 continuing education requirement upon a member of  
18 the Association that is different than the criteria for  
19 membership in the Association or renewal of such  
20 membership, except that counter-signature require-  
21 ments imposed on nonresident producers shall not be  
22 deemed to have the effect of limiting or conditioning  
23 a producer's activities because of its residence or  
24 place of operations under this section.

1           (4) No State shall implement the procedures of  
2           such State's system of licensing or renewing the li-  
3           censes of insurance producers in a manner different  
4           from the authority of the Association under section  
5           325.

6           (b) SAVINGS PROVISION.—Except as provided in sub-  
7           section (a), no provision of this section shall be construed  
8           as altering or affecting the continuing effectiveness of any  
9           law, regulation, provision, or action of any State which  
10          purports to regulate insurance producers, including any  
11          such law, regulation, provision, or action which purports  
12          to regulate unfair trade practices or establish consumer  
13          protections, including, but not limited to, countersignature  
14          laws.

15   **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

16          (a) COORDINATION WITH STATE INSURANCE REGU-  
17          LATORS.—The Association shall have the authority to—

18               (1) issue uniform insurance producer applica-  
19               tions and renewal applications that may be used to  
20               apply for the issuance or removal of State licenses,  
21               while preserving the ability of each State to impose  
22               such conditions on the issuance or renewal of a li-  
23               cense as are consistent with section 333;

24               (2) establish a central clearinghouse through  
25               which members of the Association may apply for the



1       issuance or renewal of licenses in multiple States;  
2       and

3           (3) establish or utilize a national database for  
4       the collection of regulatory information concerning  
5       the activities of insurance producers.

6       (b) COORDINATION WITH THE NATIONAL ASSOCIA-  
7       TION OF SECURITIES DEALERS.—The Association shall  
8       coordinate with the National Association of Securities  
9       Dealers in order to ease any administrative burdens that  
10      fall on persons that are members of both associations, con-  
11      sistent with the purposes of this subtitle and the Federal  
12      securities laws.

13   **SEC. 335. JUDICIAL REVIEW.**

14      (a) JURISDICTION.—The appropriate United States  
15      district court shall have exclusive jurisdiction over litiga-  
16      tion involving the Association, including disputes between  
17      the Association and its members that arise under this sub-  
18      title. Suits brought in State court involving the Associa-  
19      tion shall be deemed to have arisen under Federal law and  
20      therefore be subject to jurisdiction in the appropriate  
21      United States district court.

22      (b) EXHAUSTION OF REMEDIES.—An aggrieved per-  
23      son must exhaust all available administrative remedies be-  
24      fore the Association and the NAIC before it may seek judi-  
25      cial review of an Association decision.

1       (c) STANDARDS OF REVIEW.—The standards set  
2 forth in section 553 of title 5, United States Code, shall  
3 be applied whenever a rule or bylaw of the Association is  
4 under judicial review, and the standards set forth in sec-  
5 tion 554 of title 5, United States Code, shall be applied  
6 whenever a disciplinary action of the Association is judi-  
7 cially reviewed.

8 **SEC. 336. DEFINITIONS.**

9       For purposes of this subtitle, the following definitions  
10 shall apply:

11           (1) INSURANCE.—The term “insurance” means  
12 any product defined or regulated as insurance by the  
13 appropriate State insurance regulatory authority.

14           (2) INSURANCE PRODUCER.—The term “insur-  
15 ance producer” means any insurance agent or  
16 broker, surplus lines broker, insurance consultant,  
17 limited insurance representative, and any other per-  
18 son that solicits, negotiates, effects, procures, deliv-  
19 ers, renews, continues or binds policies of insurance  
20 or offers advice, counsel, opinions or services related  
21 to insurance.

22           (3) STATE LAW.—The term “State law” in-  
23 cludes all laws, decisions, rules, regulations, or other  
24 State action having the effect of law, of any State.  
25 A law of the United States applicable only to the

1 District of Columbia shall be treated as a State law  
 2 rather than a law of the United States.

3 (4) STATE.—The term “State” includes any  
 4 State, the District of Columbia, American Samoa,  
 5 Guam, Puerto Rico, and the United States Virgin  
 6 Islands.

7 (5) HOME STATE.—The term “home State”  
 8 means the State in which the insurance producer  
 9 maintains its principal place of residence and is li-  
 10 censed to act as an insurance producer.

## 11 **TITLE IV—UNITARY SAVINGS** 12 **AND LOAN HOLDING COMPA-** 13 **NIES**

### 14 **SEC. 401. TERMINATION OF EXPANDED POWERS FOR NEW** 15 **UNITARY S&L HOLDING COMPANIES.**

16 (a) IN GENERAL.—Section 10(c) of the Home Own-  
 17 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding  
 18 at the end the following new paragraph:

19 “(9) TERMINATION OF EXPANDED POWERS FOR  
 20 NEW UNITARY S&L HOLDING COMPANY.—

21 “(A) IN GENERAL.—Subject to subpara-  
 22 graph (B), paragraph (3) shall not apply with  
 23 respect to any company that becomes a savings  
 24 and loan holding company pursuant to an appli-  
 25 cation filed after March 31, 1998.

1           “(B) EXISTING UNITARY S&L HOLDING  
2 COMPANIES AND THE SUCCESSORS TO SUCH  
3 COMPANIES.—Subparagraph (A) shall not  
4 apply, and paragraph (3) shall continue to  
5 apply, to a company (or any subsidiary of such  
6 company) that—

7           “(i) either—

8                   “(I) acquired 1 or more savings  
9 associations described in paragraph  
10 (3) pursuant to applications at least 1  
11 of which was filed before April 1,  
12 1998; or

13                   “(II) became a savings and loan  
14 holding company by acquiring owner-  
15 ship or control of the company de-  
16 scribed in subclause (I); and

17           “(ii) continues to control the savings  
18 associations referred to in clause (i)(I) or  
19 the successor to any such savings associa-  
20 tion.”.

21       (b) TECHNICAL AND CONFORMING AMENDMENT.—

22 Section 10(c)(3) of the Home Owners’ Loan Act (12  
23 U.S.C. 1467a(c)(3)) is amended by striking “Notwith-  
24 standing” and inserting “Except as provided in paragraph  
25 (9) and notwithstanding”.

1 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**  
2 **VERTED FEDERAL SAVINGS ASSOCIATION.**

3 Section 2 of the Act entitled “An Act to enable na-  
4 tional banking associations to increase their capital stock  
5 and to change their names or locations.” and approved  
6 May 1, 1886 (12 U.S.C. 30) is amended by adding at the  
7 end the following new subsection:

8 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-  
9 VERTED FEDERAL SAVINGS ASSOCIATION.—

10 “(1) IN GENERAL.—Notwithstanding subsection  
11 (a) or any other provision of law, any depository in-  
12 stitution the charter of which is converted from that  
13 of a Federal savings association to a national bank  
14 or a State bank after the date of the enactment of  
15 the Financial Services Act of 1998 may retain the  
16 term ‘Federal’ in the name of such institution so  
17 long as such depository institution remains an in-  
18 sured depository institution.

19 “(2) DEFINITIONS.—For purposes of this sub-  
20 section, the terms ‘depository institution’, ‘insured  
21 depository institution’, ‘national bank’, and ‘State

1 bank' have the same meanings given to such terms  
2 in section 3 of the Federal Deposit Insurance Act.''.  
Passed the House of Representatives May 13, 1998.

Attest:

*Clerk.*